



GIDEON KIPNGETICH SARETO.....PLAINTIFF

VERSUS

EMILY JERUTO YEGO.....1ST DEFENDANT

FELIX KIPLAGAT SARETO.....2ND DEFENDANT

SHADRACK TIROP YEGO.....3RD DEFENDANT

RULING:

The application is a Notice of Motion dated the 3rd April, 2012 brought under Section 3A and 63 of the Civil Procedure Act and Order 40 Rule 1 and 2 of the Civil Procedure Rules.

The Applicant seeks a temporary injunction to restrain the Respondents pending the hearing and determination of the suit herein.

The Applicant relies on the grounds on the face of the Application and on the Replying Affidavit and Further Affidavit made by the Applicant herein, **GIDEON KIPNGETICH SARETO**.

Counsel for the Applicant submitted that the Applicant was the registered owner of the property or the parcel of land known as **MOI'S BRIDGE/ MOI'S BRIDGE BLOCK 2 (TUIYOBEI)/490** and the Applicant attached a copy of Title which is marked as annexure "GKS 1"

The Applicant avers that the Respondents have entered and trespassed onto the said parcel of land and have proceeded to cultivate and plant maize thereon.

The Applicant avers that he got the land as a "**gift inter vivos**" from his late father and the said parcel of land does not form part of his late father's estate.

That he resides on the said property and the Respondents are maliciously interfering with his quiet and peaceful enjoyment.

The Applicant further states and reiterates that his property is known as **MOI'S BRIDGE/MOI'S BRIDGE BLOCK 2 (TUIYOBEI) 490** whereas the Respondents own the parcel of land known as **MOI'S BRIDGE/MOI'S BRIDGE (TUIYOBEI) 493** and that the two properties are distinct from each other.

The Applicant reiterates that he has absolute right over his property and seeks the protection of the court.

The Applicant submits that he has made out a prima facie case and refers the court to the case of **GIELLA –VERSUS- CASSMAN BROWN** and urges the court to grant him the orders as prayed together with costs.

The Application was opposed in its entirety by the Respondents.

Counsel submitted that if the prayers sought are granted the main suit stands determined. That the 1st Respondent/Defendant has been in possession of the land and has lived thereon for 48 years and still resides thereon.

That the 1st Defendant/Respondent is the step-mother of the Applicant and that the Applicant's mother is the 2nd wife of the deceased **JOSHUA YEGO BIRECH** and there exists a family dispute over the parcel of land.

Counsel for the Respondents further submitted that there is a succession cause pending before the court namely **Eldoret Succession Cause No. 47 of 2007** relating to the same subject matter.

Counsel further submitted that this matter ought to proceed for full hearing and determination and if the orders sought were granted this would amount to an eviction in the name of an injunction.

This court has heard the submissions of Counsel for the Applicant and the Respondents and finds that the issues for determination are;

- i) Eldoret Succession Cause No. 47 of 2007
- ii) Injunctive orders.

On the first issue, the court has had opportunity to call for and peruse Eldoret Succession Cause No. 47 of 2007 and finds that the parties therein are the same as the parties herein.

It is evident that there exists a family dispute over the property known as **MOI'S BRIDGE/MOI'S BRIDGE BLOCK 2 (TUIYOBEI) 490**. The Applicant states that he is in possession of the land and the 1st Respondent states that her matrimonial home is on the property and that she has resided there for the last 48 years.

On the second issue the court acknowledges the fact that the Applicant is the registered owner and that the Applicant has met the threshold as set down in **GIELLA –VS- CASSMAN BROWN** in that he has made out a prima facie case with a probability of high chances of success.

It is trite law that even if a party meets this threshold the reliefs sought are discretionary and equitable. If it is shown that the application does not meet the standards or approval of a court of equity the remedy sought may be denied.

The court finds that there are weighty issues relating to succession and that both parties have vested interests.

The court also finds that there are other orders in existence in Eldoret Succession Cause No. 47 of 2007. This court is not desirous in granting orders that will be in direct conflict with other orders already in existence.

For the reasons stated above this court finds that this is not a suitable case for it to exercise its discretion.

The application is disallowed instead the court orders that a **“STATUS QUO”** be maintained pending hearing and final determination of the main suit.

The costs shall be in the cause.

It is so ordered.

Dated and delivered at Eldoret 17th day of August 2012.

A.MSHILA
JUDGE

Coram: Before Hon. A Mshila J

CC: Andrew

Counsel for the Plaintiff: Ng'eno.

Counsel for the Defendant: No appearance.

A.MSHILA
JUDGE