



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**CIVIL CASE NO.78 OF 2010**

**SIMON BII.....PLAINTIFF**

**VERSUS**

**RICHARD K. SANG alias NDALAMERE.....1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR KERICHO.....2<sup>ND</sup> DEFENDANT**

**DISTRICT SURVEYOR BURET.....3<sup>RD</sup> DEFENDANT**

**RULING**

This is a Ruling on the Plaintiff's Chamber Summons application dated 16<sup>th</sup> November 2011.

The Plaintiff, **Simon Bii**, avers that he is the personal administrator of the estate of the late Wilson Kiplangat Kalia whose estate includes land title No **Kericho/Getarwet/247**. He contends that Richard K. Sang, the 1<sup>st</sup> Defendant, who is the proprietor of land title No **Kericho/Getawet/618** which is said to be adjacent to land title No Kericho/Getarwet/247 has encroached on land title No Kericho/Getarwet/247. The Plaintiff seeks in the suit an order to compel the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to ascertain the proper acreage of land titles Nos Kericho/Getarwet/618 and 247. He also seeks a permanent injunction to restrain the 1<sup>st</sup> Defendant from alienating or interfering with the occupation and use by the Plaintiff of the land title No Kericho/Getarwet/247.

Paragraphs 8 and 9 of the Plaint are very badly framed as the Plaintiff's claim is levelled against "*the defendant*" and the orders sought are against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants!

In the Chamber Summons dated 16/11/2011, the Plaintiff seeks orders that

**(2) Pending the hearing and determination of the instant application the Honorable Court be pleased to grant an order compelling the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to ascertain the proper acreage and/or measurement of Kericho/ Getarwet/61 vis avis Kericho/Getarwet/247.**

**(3) Pending the hearing of this suit and upon granting prayer 2 the Honorable Court be pleased to grant an eviction order and a permanent injunction restraining the 1<sup>st</sup> defendant, his agents and/or servants from alienating and/or in any manner interfering with the occupation and used by the Applicant and members of his family over plot number Kericho/Getarwet/247.**

The Plaintiff does not contain any averments which show that the Plaintiff has a justiciable claim against either the 2<sup>nd</sup> or the 3<sup>rd</sup> Defendant in respect of which the mandatory order sought can be granted and consequently the application cannot succeed. I note that while the Plaintiff does not seem to know the precise boundaries of his land in relation to land title No Kericho/Getarwet/618, (and is therefore seeking an order for ascertainment of acreage of these two parcels of land ostensibly so as to ascertain whether the 1<sup>st</sup> Defendant has encroached on land parcel No Kericho/Getarwet/247), the Plaintiff still seeks an order for eviction against the 1<sup>st</sup> Defendant!

I find no basis in the application or for the orders sought.

I observe that **Section 21 of the Registered Land Act, Chapter 300** of the laws of Kenya, under which the two parcels of land are registered, contains provisions for ascertainment of boundaries and gives the Land Registrar power, on an application by any interested party, to determine and indicate the position of the uncertain or disputed boundary. If the Plaintiff had taken advantage of these provisions, the problem he seems to have would have been solved. An order to compel the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to ascertain the boundaries cannot be granted where, as here, the said Defendants have not been requested to ascertain the boundaries. The suit against them does not seem tenable.

I dismiss the application dated 16/11/2010 with no order as to costs.

**DATED at KERICHO** this 23<sup>rd</sup> day of March, 2011

**G.B.M KARIUKI, SC**

**RESIDENT JUDGE**

**COUNSEL APPEARING**

Mr. G. M. Maengwe, Advocate, for the Applicant

Mr. J. K. Koske, Advocate, for the 1<sup>st</sup> Respondent

Mr. R. Koech, Court clerk