



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

Civil Suit 61 of 2009

DAVID BOIT:.....PLAINTIFF

VERSUS

DANIEL MAIYO..... 1ST DEFENDANT
CHEPYAKWAI FARMERS CO-OPERATIVE SOCIETY:.....2ND DEFENDANT

RULING

Before me is an application brought under order XXXIX Rules 1, 2 and 9 of the civil Procedure Rules. It prays that pending the hearing of the main suit there be an order of injunction restraining the Defendants, their servants, agents and/or employees from trespassing onto, cultivating, erecting structures, transferring, disposing off or in any other way interfering with the 21 acres of land comprised in plot No.84A and now described as **PIONEER/NGERIA/BLOCK1 (EATEC) 2127** and belonging to the Plaintiff. It is brought on the grounds that the suit property belongs to the Plaintiff and the Defendants have without colour of right threatened to deprive the Plaintiff of the same. In the supporting affidavit the Applicant depones that he bought the suit land sometime during April 2001 and paid for it fully by installments, while in occupation, upon which he was allowed by the Defendants' officials to take possession of the suit premises whereupon he cultivated and constructed a house and he has been in occupation since then but the 1st Defendant has consistently threatened to trespass on the suit land. That the 1st Defendant has uprooted the fence round the suit premises and only stopped when he was served with a court order. He swears that the suit property is his only residence and the Defendants have no right to it. He prays for an injunction as above until the suit filed herein is heard and determined.

The application is opposed. William Kimeli Choge the Secretary to the 2nd Defendant/Respondent swore a replying affidavit in opposition to the application. He swore that the applicant encroached onto the 1st Defendant's/Respondent's portion of land thereby extended what he legally bought and settled on and he states that such encroachment was without justification. He adds that the Applicant has not todate finished paying for the land he was allocated and as such he should not be granted the orders sought. The Applicant is described as a member of the 2nd Defendant.

At the hearing it was urged for the Applicant that he is in possession and had made developments on the suit land and it is important

that status quo be maintained until the suit is heard and determined.

In opposition it was urged that the applicant had not even proved purchase and so the orders sought ought not to issue.

I have given this matter due consideration. I have perused the pleadings herein and from them the question of sale of the suit land is not in dispute. The same is fully confirmed in paragraphs 9 and 10 of the Replying Affidavit wherein the Secretary to the 2nd Defendant admits that the Plaintiff/Applicant bought the suit land even though the issue of whether or not he concluded paying the purchase price must be left for the trial court. Whether or not the Applicant is in his portion of land which he bought and was shown by the 2nd Defendant's Secretary or whether he has encroached onto other land is a matter of evidence at trial. . As the material before court now shows that the Applicant bought land and has developed it and is in possession and that is not disputed. He has made out a case with a probability of success at trial and he has earned this court's protection at this stage. In this case the issue of inadequacy of damages as compensation does favour the Applicant as he should not have to be compensated by way of damages for what he rightfully owns after having bought the same. And I am not in any doubt about the two issues above but if I were to be in doubt then I find that the balance of convenience tilts in favour of the Plaintiff/Applicant. Accordingly I hereby grant an injunction in terms of prayer

(c) of the Chamber Summons dated 22nd April,2009 and filed in court on 27th April,2009.

There will be orders accordingly.

DATED AND DELIVERED AT ELDORT THIS 25TH DAY OF FEBRUARY, 2010.

P.M.MWILU

JUDGE

IN THE PRESENCE OF:

Mr. Manani holding brief for Andambi Advocate for the Plaintiff/Applicant

Mr. Chemoiyai holding brief for Buluma Advocate for the Defendant/Respondent

Paul Ekitela - Court Clerk.