

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Civil Case 148 of 2009

PAUL KIPSANG KOSGEL.....1ST PLAINTIFF
ESTHER JEPCHUMBA MUTAI.....2ND PLAINTIFF
VERSUS
THOMAS KIPRONO MAGUT.....1ST DEFENDANT
JOSEPH KIPNGENO TONU.....2ND DEFENDANT

RULING

Before court is an application under Order XXXIX Rules 2 and 9 of the Civil Procedure Rules and all other enabling provisions of the law. It is taken out by the Plaintiffs praying for an injunction to issue against the Defendants restraining them, their agents or servants from trespassing onto, wasting, cultivating, constructing, and/or interfering with the Plaintiffs' parcel of land known as Eldoret Municipality Block 14/215. It is based on the grounds that the Plaintiffs are the sole registered owners of the suit land and they have a prima facie case with a probability of success and the balance of convenience tilts in their favour. And it is in the interest of justice and equity that the application be allowed. There are affidavits sworn by the Plaintiffs in support of their application. Thomas Kiprono Magut the 1st Defendant has sworn the Replying Affidavit for himself and for the 2nd Defendant and opposes the application on the grounds that the Defendants bought the suit land on 8th March 2008 and 14th March 2008 respectively and took possession and went into occupation and have made developments on the same and they do not know how the Plaintiff's came to be registered as proprietors.

Submissions for the Applicants were that as the registered owners of the suit land the Applicants were entitled to the orders sought and the fact that they were in occupation was not denied. In opposition there was submission that the Defendants were in occupation since they executed sale agreements during 2008 and that the sale of the same suit land to the Plaintiffs was subject to rights of the Defendants as per the provisions of S.30 (g) of the Registered Land Act. That in any case there was a restriction noted against the title due to non payment of additional stamp duty and so the application must fail.

Do the Plaintiffs have a prima facie case with a probability of success at trial? Would they suffer irreparable damage not capable of being compensated by an award in damages? Where does the balance of convenience lie? The answers to those questions will determine this application.

That the Applicants are the registered owners of the suit land was established by the Certificate of Lease annexed to the Applicants' application and marked "PKKI". The suitland herein Eldoret Municipality Block 14/215 measuring 0.4047 hectares is exactly the same as is described in the said Certificate of Lease above. It is that same parcel of land that the Defendants have each entered into separate sale agreements with one Japheth Kosgei Kipkorir on 8th

March 2008 and 14th March 2008 to purchase a ¼ acre each thereof. The title held by the Applicants is over the entire parcel of land. That registration gives the applicants absolute proprietorship over the said piece of land pursuant to the provisions of section 27 of the Registered Land Act cap.300 of the Laws of Kenya. As registered owners over the suit land I find that the Applicants do make out a prima facie case with a probability of success at trial. There is no basis shown upon which the Defendants may be allowed to interfere with the Plaintiff's land. The issue of whether or not damages would be adequate compensation does not arise, in my view, where as in this case the suit land is shown to belong to the Applicants and they should not be deprived of the same or interfered with in their enjoyment of the same. The balance of convenience naturally lies with the registered owners who are in actual occupation. The issue raised of the payment of additional stamp duty does not affect title and it is therefore not a relevant consideration in respect of the matters now before court. For these reasons I allow the application and there shall issue an order for injunction in terms of prayer (c) of the Chamber Summons dated 15th August, 2009. Costs to the Applicants.

DATED SIGNED AND DELIVERED AT ELDORET THIS 14TH DAY OF JULY 2010.

P.M.MWILU

JUDGE

IN THE PRESENCE OF

Z.K.Yego - Advocate for Plaintiff/Applicants

Ngala - Advocate for Defendants/Respondents

Andrew Omwenga - Court clerk

P.M.MWILU

JUDGE