



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT ELDORET

Civil Suit 150 of 2008

MONICAH JEPKOSGEI KIPLAGAT:.....1ST PLAINTIFF

KIPTUM CHERION:.....2ND PLAINTIFF

VERSUS

PAULINE JEPKOSGEI KIPLAGAT:.....1ST DEFENDANT

JACKSON KIPRONO:.....2ND DEFENANT

STANLEY KIPKURGAT:.....3RD DEFENDANT

ABDUL RAHMAN SHEIKHA ALI:.....4TH DEFENANT

RULING

The 4th Defendant **ABDUL RAHMAN SHEIKH ALI** has taken out a Notice of Motion under sections 3A and 63 (e) of the Civil Procedure Act and Order L Rule 1 of the Civil Procedure Rules and all the enabling Provisions of the Law praying that this Honourable court be pleased to vary and/or set aside the orders issued on 30th march,2009 to the extent that it allows the 4th Defendant permission to graze and house his diary cows on a portion of the suit land pending the hearing and determination of the application for leave to amend the plaint and for injunction by the Plaintiffs. The present application is based on the grounds that the Applicant herein bought the suit land and subsequently bought dairy cattle that he put in the suit land but thereafter there was an order of the court issued to the effect that he vacates the suit land and removes his dairy cattle which he obediently did and now some of those cows have died due to lack of proper shelter and others are in calf and he prays for only an acre of what he had bought for the purposes stated above. The Applicant swore an affidavit to support his application.

The application is opposed and grounds of opposition filed that the application is without merit incompetent and unsustainable in law as it is brought under incorrect provisions of the law and there is neither an appeal nor discovery of a new matter.

At the hearing both counsel submitted in support of their respective positions reiterating what each had filed.

The order of the court made on 30/03/2009 affected the Applicant herein who was not a party to the

proceedings at the time but who was a purchaser for value without notice. Upon buying the suit land he had taken possession and put into the suit land dairy cattle which he says is what he had intended the suit land for. The dispute as to the original ownership of the suit land was between the Plaintiff and the 1st Defendant who had sold the suit land to the 4th Defendant. That is the background to the orders of the 30/03/2009 and how they affected the 4th Defendant, now applicant, who was affected because of reason of being in occupation as a purchaser for the wrongs of the 1st Defendant. It is accepted that the Applicant was made a party to these proceedings on 22/04/2009 and to date has not been heard on whatever his case may be. It is not denied that the Applicant has never been in contempt of any court orders and the argument that he has not purged the contempt is misplaced. The person to blame is the 1st Defendant seller of the suit land. There cannot be any justice in my view for the Applicant to use his money in purchasing the suit land and investigating in dairy cows therein only for his investment to go up in smoke as his cattle die due to lack of shelter and pasture. The wrong should lie where it is and it is not with the Applicant herein.

For me the ends of justice will be met by allowing this application to the extent that the applicant is allowed to re-enter the suit premises and occupy one acre thereof for purposes of sheltering and grazing his dairy cows. For the avoidance of doubt this orders does not validate whatever illegalities that may have been committed by other parties and more particularly the 1st Defendant. The applicant will not interfere with the title to the suit while he occupies the one acre of the suit land. These orders will persist until the application dated 25/03/2009 is heard and determined.

There will be orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 2ND DAY OF

DECEMBER, 2009.

P.M.MWILU

JUDGE

IN THE PRESENCE OF

Mr. Kathili for the Applicant

Mr. Marisbe holding brief for Mr. Omboto for Respondent