

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Civil Case 58 of 2007

KIPKOLUM ARAP KIRONGO:.....PLAINTIFF

VERSUS

JOSEPH LETING1ST DEFENDANT

HELLEN KEMBOY:.....2ND DEFENDANT

R U L I N G

Applicant before me by the plaintiff seeks for orders of injunction restraining both defendants, their servants or agents from selling, sub-dividing, claiming the use, entering, interfering, alienating or in any way dealing with the plaintiffs parcel of land known as NANDI/CHEPTERWOI/377 pending ;the determination of this suit.

The plaintiff deponed that he is the registered owner of the sit land since 1973. He said that sometimes he gave a licence to the father of the 2nd respondent who is also the grandfather of the 1st respondent, a licence to use the land. The licensee died after sometimes and passed the licence to the respondents who have been tilling the land. They live in an adjacent parcel of land.

Application was opposed. Court was told that the respondents have been living on the land since 1972. They have houses there and that the land was brought from the applicant by their grandfather/father who paid Shs.800/= to the applicant. In their defence they put a claim of adverse possession.

I have considered the application and find no merit in it. Though the applicant states that the respondents do not live in the suit land and only go there to cultivate and graze the pleadings indicates differently. It seems that the respondents have infact been occupying the suit land for quite sometimes. That is why in prayer (b) of the plaint the applicant seeks for the respondents to be He would not be seeking for an order of eviction if the respond”.....**be ejected from the suit land**”. He would not be seeking for an order of eviction if the respondents are not in occupation. An order of temporary injunction is issued to stop an intended or threatened breach. Granting such an order now would be tantamount to granting prayer (b) in the plaint at this interlocutory stage.

The applicant is the one who is holding the title deed to the suit land currently. The respondents therefore cannot sell, alienate or subdivide the suit land. The applicants fear that they will do so and therefore the need for an injunction is misplaced.

The applicant has not been in occupation or been cultivating the land. The respondents have been doing so. Thus the balance of convenience tilts in their favour and not in favour of the applicant.

From the above therefore I find application has no merit and the same is dismissed with costs.

Dated and Delivered at Eldoret on 5th day of March, 2008

KABURU BAUNI

JUDGE

IN THE PRESENCE OF:-