

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT KERICHO
Civil Suit 115 of 2005

PETER BEKYIBEI LANGAT APPLICANT

VERSUS

RECHO CHEPKURUI MOSONIK 1ST RESPONDENT

RAEL CHEPKOSKEI MOSONIK 2ND RESPONDENT

RULING

The applicant, Peter Bekyibei Langat filed suit against Rachel Chepkurui Mosonik and Rael Chepkoskei Mosonik seeking orders of this court to declare that he is entitled to twenty (20) acres out of parcel no. KERICHO/NORTH SOTIK/35 (*hereinafter referred to as the suit land*) by virtue of having been in adverse possession of the said parcel of land for a period of more than twelve years. Contemporaneously with filing the suit the applicant filed an application for injunction under the provisions of *order XXXIX Rules 1, 2, 3 and 9 of the Civil Procedure Rules*. The applicant sought to restrain the respondents or anyone acting under them from alienating, interfering or in any other way dealing adverse to the interest of the applicant with the suit land pending the hearing and determination of the suit. The application is supported by the annexed affidavit of the applicant.

The application is opposed. The respondents filed a notice of preliminary objection objecting to the originating summons. They stated that the originating summons filed by the applicant was fatally defective and ought not to be allowed to stand. The respondent further stated that they had not been appointed to act as the administrators of the estate of Kipsoi Mosonik who is now deceased. They urged the court to disallow the application.

At the hearing of the application Mr. Korir, learned counsel for the applicant urged this court to grant the injunction sought by the applicant. He submitted that the Respondents had interfered with the applicant's possession of the portion of land measuring twenty (20) acres which had resulted in a criminal case which is now pending before the subordinate court at Sotik. He further submitted that the respondents had begun to dispose off part of the suit land. If the respondents are not restrained by means of an injunction the applicant is apprehensive that his suit would be prejudiced. He further submitted that the originating summons filed by the applicants was competent and properly before court. He argued that the respondents were indeed the administrators of the estate of the Kipsoi Mosonik – Deceased (*hereinafter referred to as the deceased*). The applicant submitted that as the person on the ground and in occupation, he should be granted the orders sought.

Mr. Rono learned counsel for the respondents opposed the application. He submitted that the suit against the respondents was incompetent because the respondents had not been appointed to administer the estate of the deceased by the court. He submitted that the applicant had not demonstrated what loss he would suffer if the orders sought are not granted. He further submitted that the originating summons filed by the applicant was incompetent because the applicant had not annexed a copy of the title in the said suit. He further submitted that the applicant had not established that the respondents had interfered with the suit land. He stated that the letter of the chief annexed to the application was no proof that indeed the respondents had interfered with the suit land or had sold part of the same as alleged by the applicant. He submitted that the applicant had not established that he was in possession of the suit land and therefore had not established a *prima facie* case. He urged this court to dismiss the application with costs.

I have read the pleadings filed by the parties to this application. I have also carefully considered the rival arguments made before me by the counsel for the applicant and the respondents respectively. The issue for determination by this court is whether the applicant has established a case so as to enable this court grant him the orders of injunction sought. From the outset, I wish to state that the respondents chose not to file any replying affidavit to the applicant's application for injunction. In the circumstances therefore the facts deponed to by the applicant were not challenged by the respondents. The applicant deponed that he has been in occupation of twenty (20) acres comprised of part of parcel number KERICHO/NORTH SOTIK/35 since 1971 when he purchased the same from Kipsoi Mosonik (deceased). The said parcel of land was however not transferred to the applicant due to the fact that the deceased died soon thereafter. The applicant could not have the said parcel of land transferred to him because the respondents herein did not obtain letters of administration to administer the estate of the deceased until the year 2004. Although the respondents submitted that they did not have letters of administration in respect of the deceased's estate, upon perusal of *Kericho High Court Succession Cause No. 6 of 1996. In the matter of the Estate of Kipsoi Mosonik – deceased*, I have noted that letters of administration were issued to the respondents on the 25th of October, 2004 when this court endorsed the consent of the parties to the said succession proceedings.

The said consent granted the respondents herein authority to be the administrators of the estate of the deceased. The submission by the respondents that they did have letters of administration to administer the deceased's estate is therefore not correct. The respondents were being economical with the truth. Further the objection by the respondents that the applicant's suit was incompetent due to the fact that no copy of the title of the suit land had been annexed to the originating motion is a red herring which is meant to divert this court's attention from the matters in issue. The applicant annexed an exhibit number "PBL 7" being a letter from the District Land Adjudication Officer, Kericho District who confirmed that the suit land although registered in the name of Kipsoi Mosonik had no title issued due to the fact that no application had been made by the administrators of the deceased's estate.

In summary, the case before this court is that the applicant claims twenty (20) acres out of the suit land which he states to have been in

occupation since 1971 when he purchased the same from the deceased. This fact has not been disputed by the respondents. It is uncontroverted. The applicant is apprehensive that the respondents have embarked on a mission to dispossess him of the said parcel of land. He states that the respondents have attempted to sell the suit land to third parties.

Having evaluated this evidence, it is clear that if an order of injunction is not granted the respondents shall interfere with the *status quo*. In my considered opinion the applicant has established a *prima facie* case. He has established that he resides on the suit land. He should continue residing on the said parcel of land pending the hearing and determination of the suit that he has filed herein. In the premises therefore, the application by the applicant for injunction dated the 29th September, 2005 is hereby allowed with costs. The respondents are restrained from interfering with the applicant's possession and occupation of the part of that parcel of land known as Kericho/Sotik North/35 measuring twenty (20) acres pending the hearing and determination of the suit filed herein.

DATED AT KERICHO THIS 8th DAY OF FEBRUARY, 2006

L. KIMARU

JUDGE