



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL CASE 57 OF 2005

LONRHO AGRIBUSINESS (EA) LTD.PLAINTIFF/APPLICANT

-VERSUS-

JAMES MARITIM..... DEFENDANT/RESPONDENT

RULING

Before me is a Chamber Summons dated 20th July 2005, filed by Messrs. Gicheru & Company Advocates on behalf of Lonrho Agribusiness (EA) Limited. It is purported to be brought under section 3A and 63 (e) of the Civil Procedure Act and Order XXXIX rule 1, 2 and 9 of the Civil Procedure Rules. It seeks for four orders, the first two of which have been spent, as follows –

(a) Spent

(b) Spent

(c) A temporary injunction be and is hereby issued restraining the defendant, his servants and or agents from transferring, leasing, encumbering, wasting, trespassing into and or otherwise entering into possession of land parcel numbers PIONEER NGERIA BLOCK 1(EATEC) 5891 and 5892 pending the hearing and determination of this suit.

(d) Costs be in the cause.

The application has grounds on the face of the Chamber Summons and is supported by an affidavit sworn on 20th July 2005 by David Korir, the property sales manager of the applicant.

The application and hearing notice were served on the respondent, but he did not appear and it was therefore heard ex-parte.

At the hearing of the application Mr. Gicheru for the applicant submitted that the applicant seeking prayer (c) of the application. His argument was that the subject two parcels of land were curved out of one parcel which was registered in the name of EATEC, which later changed its name to EATEC Limited, then to Lonrho Agro Industries Limited, then to Lonrho Agribusiness Limited. Therefore the applicant was the owner of the subject land. Land parcel No. 3180 was the parcel which was subdivided to parcels 5891 and 5892, which were the parcels, the subject of these proceedings.

He submitted that the respondent was trespassing and claiming the subject land as the owner. That his claim of ownership was based on the award of the Land Disputes Tribunal, which was adopted

by the subordinate court and marked as Annexure 8 to the supporting affidavit. That the respondent's claim of ownership was against one Wilson Karonei who had no title to the land. The applicant as the owner of the subject land was not made a party in the Land Disputes Tribunal proceedings. In his view, since Wilson Karonei was not the owner of the subject and, the respondent could not acquire ownership from him

He also submitted that there was no agreement for sale as required under section 3(3) of the Law of Contract Act (Cap.23) and there was no consent from the Land Control Board, for the transfer of the subject land.

He further submitted that the Land Disputes Tribunal did not have jurisdiction to deal with registered land or to determine ownership of land. He cited several cases, that is Kipkering arap Muzee –vs- Kitur arap Muzee – Eldoret HCCC. No.1 of 2003; David Ngetich Kimibei –vs- Attorney-General – Eldoret HCCC. No. 55 of 1998; Republic –vs- Kosirai Land Disputes Tribunal – Eldoret HC. Misc. Civil Application No.68 of 2002; and the Court of Appeal decision in the case of Asman Maloba Wepukhulu –vs- Francis Wakwabubi Biketi – Kisumu Civil Appeal No.157 of 2001.

I have consider the applications and submissions made before me. I have also considered the decisions cited to me and the law. I have no hesitation in coming to the conclusion that a Land Disputes Tribunal has no jurisdiction under the Land Disputes Tribunals Act to determine ownership to land. I agree with the decision of Justice Etyang in the case of Kipkering arap Muzee –vs- Kitur arap Muzee – Eldoret HCCC. No.1 of 2003, when the learned Judge stated at page 7 of the ruling –

“ It is clear from the statutory provisions of section 3 of the Land Disputes Tribunal Act that the tribunal is only empowered to adjudicate on disputes relating to the division of or the determination of boundaries to land, including land held in common, a claim to occupy or work on land or trespass to land.”

From the above, it is clear that the Land Disputes Tribunals do not have powers to deal or determine issues related to title to land under the Registered Land Act (Cap.300).

This is an application for temporary injunction pending the hearing of the suit. In such an application, the applicant has to show that he has a prima facie case with probability of success, secondly, that the applicant will suffer irreparable injury if the injunction is not granted i.e. that damages will not be adequate compensation, and thirdly, if the court is in doubt then it will determine the matter on the balance of convenience (see Geilla –vs- Cassman Brown [1973] EA 358).

Has the plaintiff shown that he has a prima facie case with probability of success? The plaintiff has filed a plaint. He alleges to be the owner of the two parcels of land that is PIONEER NGERIA BLOCK 1(EATEC) 5891 and 5892. He also alleges that the defendant lodged a claim with the Kessess Divisional Land Disputes Tribunal claiming the two parcels of land. Also that the award of the Tribunal was read in court on 10th June 2005 in Eldoret CMC Award No.14 of 2005 between James Maritim (the respondent) and Wilson Karonei.

I have perused the documents filed. I see indeed an award No. 14 of 2005 by the Chief Magistrate's Court at Eldoret. The record of that award does not show the subject land in question, nor the actual decision of the Tribunal. It merely states that the award was read in open court.

The burden is on the applicant to establish before this court on a balance of probabilities, that he has a prima facie case against the respondent. His major complaint is on the award of the Land Disputes Tribunal which was adopted by the court. He contends that the two above plots were awarded to the respondent. The document on the award that he has filed as annexure “DK8” to the supporting affidavit, does not show the land parcel numbers in question, nor does it show the

decision of the Tribunal. In those circumstances, I am of the view that, in relation to the application for a temporary injunction, the applicant has not established a prima facie case before me to justify my granting the orders of a temporary injunction. I am not however going to the merits of the main suit, as that will depend on evidence to be tendered in court.

On the basis that the applicant has not shown a prima facie case in the application to warrant me grant orders of temporary injunction, I dismiss this application. As the respondent did not appear in court, I make no order as to costs.

Dated and delivered at Eldoret this 12th day of October 2005.

George Dulu

Ag. Judge

In the Presence of: Mr. Were for the applicant

N/A for respondent