

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET
CIVIL SUIT NO.59 OF 2003

CHEPCHIENG D. CHELAGAT (suing as Attorney for

CHARLES CHEMARIGO PLAINTIFF

VERSUS

TAPTENGELEI NGETICH 1ST DEFENDANT

DANIEL KIPTOO NYONGIK 2ND DEFENDANT

NATHAN BITTOK 3RD DEFENDANT

PATROBA RONO 4TH DEFENDANT

SOLOMON TIROP 5TH DEFENDANT

JOYCE KOSGEI 6TH DEFENDANT

J. P. TUMBO 7TH DEFENDANT

RULING

This is an application by way of Chamber Summons dated 15th July, 2003 for orders that a temporary injunction be issued against the defendants, their servants or agents or any other persons acting on their behalf, restraining them from trespassing into by entering, occupying and or in any other manner interfering with parcel of land No. **SOY/SOY BLOCK 10 (NAVILLUS) 119** pending hearing and determination of the suit filed by the plaintiff. The application is supported by an affidavit dated 15th July, 2003 sworn by the plaintiff, Chepchieng D. Chelagat. The defendants on the other hand have objected to the application and supported their objection by the affidavit of one of the defendants Nathan Bitok which is dated 18th July, 2003.

The advocate for the plaintiff/applicant Mr. Gicheru has submitted before me that the land in question was sold to his client in 1999 by Lonrho E. A. Limited at a price of Kshs.656,376/= and his client was registered as owner under the Registered Land Act (Cap.300). He submitted that his client or agents of his client were in occupation of the land until February, 2003 when the land was invaded by the defendants/respondents who established a school which is not registered and evicted the agents of the applicant. They argued that the subject in issue being land, the continued occupation and use of the land by the respondents will cause irreparable damage to the interests of his client which cannot be adequately compensated through damages. So he is seeking for an injunction to issue until the case which his client has filed is heard and determined. He referred to several cases on the issue of rights of ownership to land.

Mr. Obiero for the respondents argued that the land in question was land that was set aside for public use i.e. putting up a school. A school had been established which is being used by pupils from the neighbourhood. The school had the support of the local administration and granting an injunction would adversely affect the pupils and the community. He argued that at the end of the day an award of damages will be adequate, and therefore the application should be dismissed. The advocate for the respondents does not aver that the respondents have title. In fact, the documents in the file show that the plaintiff is the owner of the land and has title under the Registered Land Act. The point of contest is that the affidavit of Chepchieng D. Chelagat states that the defendants entered the land and put up a school in 2003 while the

affidavit of Nathan Bitok for the respondents states that the land had been used to run the school and for cultivation before the land was sold to the plaintiff. Trying to balance the convenience of the parties in contest, I come to the conclusion that it is not appropriate to grant an injunction at this time, as school children will in the meantime suffer as a result. I consider that this is a case in which the plaintiff can take steps to fix for a very early hearing date and it can be heard and determined quickly.

In the result therefore, I decline to grant the orders of injunction sought by the applicant. Costs will be in the cause.

Dated and Delivered at Eldoret this 14th Day of January, 2004.

George Dulu,

Judge