



Lagat t/a Kaptarakwa Enterprises v Salleh & 4 others (Environment & Land Case 393 of 2015) [2023] KEELC 20646 (KLR) (12 October 2023) (Judgment)

Neutral citation: [2023] KEELC 20646 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 393 OF 2015**

**EO OBAGA, J
OCTOBER 12, 2023**

BETWEEN

KIPKOECH LAGAT T/A KAPTARAKWA ENTERPRISES PLAINTIFF

AND

CHRISTOPHER SALLEH 1ST DEFENDANT

BEN MAIYO 2ND DEFENDANT

WK RUTO 3RD DEFENDANT

LUCY KANGOGO 4TH DEFENDANT

KEIYO HOUSING CO-OPERATIVE SOCIETY 5TH DEFENDANT

JUDGMENT

Introduction

1. The Plaintiff filed a suit against the Defendants in which he sought the following reliefs:-
 - a. An order that the Defendant's use and enjoyment of the portions belonging to the Plaintiff previously housing the hotel, bar and butchery together with guest rooms and currently converted to new Koibarak bar, new Koibarak hotel, M-pesa shop, wines and spirits shop, cosmetic shop and guest rooms for use and enjoyment by the 1st, 2nd, 3rd, 4th and 5th Defendants respectively is illegal.
 - b. An order of eviction to issue against the 1st, 2nd, 3rd, 4th, and 5th Defendants and an order of permanent injunction to issue restraining them by themselves, their agents or servants from access of, using, enjoying or in any other way whatsoever interfering with the plaintiffs use and enjoyment of their premises.



- c. An order of permanent injunction to restrain the 5th defendant by itself, its agent or servants from use, enjoying, running and managing the plaintiffs' guest rooms and the M PESA shop and further to restrain them from receiving any income there from or any rent proceeds whatsoever from any spaces in the suit premises belonging to the plaintiffs.
 - d. An order of mandatory injunction to issue compelling the 5th Defendant to allow the plaintiffs or their nominees, agents or servant to freely access, use and enjoyment of their portion of the premises.
 - e. Special damages as per paragraph 17
 - f. General damages.
 - g. Costs of the suit.
 - h. Any other relief this honorable court deems fit and just to grant.
2. The 5th Defendant filed a defence and raised a counter-claim seeking the following reliefs:-
- a. A declaration that 5th Defendant is the owner of Eldoret Municipality Block 7/72.
 - b. A permanent injunction restraining the Plaintiff by himself, his agents, employees, servants or otherwise from dealing or interfering with title Eldoret Municipality Block 7/72.
 - c. The Plaintiff be condemned to pay the costs of this suit.
3. The 2nd to 4th Defendants did not enter appearance. The Plaintiffs' counsel had hinted on withdrawing the suit but this did not materialize as the counsel for the Plaintiff were unable to agree on two issues. The court gave a hearing date in the presence of the Plaintiff's counsel. Come the hearing date neither the Plaintiff nor his counsel were in court. The Plaintiff's suit was dismissed and the 1st and 5th Defendant proceeded with the hearing of the counter-claim.

First and fifth Defendant's case;

4. The 1st and 5th Defendants gave their evidence through Titus Komen Korir who is the Chairman of Keiyo Housing Co-operative Society, the 5th Defendant herein. He stated that the 5th Defendant is the registered owner of LR. No. Eldoret Municipality Block 7/72.
5. The Plaintiff was a tenant of the 5th Respondent, having signed a tenancy agreement dated 1/1/2005 which was to run for 5 years and 2 months. When the tenancy expired, a new tenancy agreement was drawn but the Plaintiff refused to sign the same. The 5th Respondent issued a notice of termination of tenancy but the Plaintiff filed a reference before the Business Premises Rent Tribunal. The Tribunal ruled against the 5th Defendant. The 5th Defendant moved to the High Court where they filed Judicial review proceedings seeking to quash the verdict of the Tribunal but the application for Judicial Review was dismissed.
6. The Plaintiff and others filed HCCC No. 160 of 2012 against the 5th Defendant and 3 others but this suit was dismissed this year.

Analysis and determination;

7. I have gone through the documents produced by the 1st and 5th Defendants. The issues which emerge for determination are; firstly, whether the 5th Defendant is the sole owner of the suit property. Secondly, whether an injunction should issue against the Plaintiff. The Plaintiff was the 5th Defendant's member



number 60. It appears that he was expelled from the 5th Defendant's membership. The expulsion is expressed to have been done under by-law number 20 but a look at the 5th Defendant's by-laws of 2008, the provision for expulsion is under clause 21. A member who has been expelled under clause 21 has an opportunity to appeal against the expulsion at the next meeting of the Society.

8. There was no evidence whether the Plaintiff appealed against his expulsion which was ratified on 13/7/2012. There is also no evidence of the next meeting where the Plaintiff would have appealed against his expulsion. This being the case, I have no basis for finding that the Plaintiff is not a member of the 5th Defendant as to bar him from the activities of the 5th Defendant.
9. The 5th Defendant is seeking a declaration that it is the sole owner of LR. No. Eldoret Municipality Block 7/72. The certificate of lease produced as exhibit 1 clearly shows that the suit property is owned by the 5th Defendant which is holding it for three different Co-operative Societies that is Chepkorio Farmers' Co-operative Society Limited, Metkei Farmers' Co-operative Society Limited and Kaptarakwa Co-operative Society Limited. There is therefore no basis upon which the 5th defendant can be declared as the sole registered owner of Eldoret Municipality Block 7/72 to the exclusion of the three other Co-operative Societies which came together under the umbrella of the 5th Defendant.

Disposition;

10. From the above analysis, it is clear that the 1st and 5th Defendants have failed to prove their counter-claim on a balance of probabilities. The counter –claim is dismissed with no order as to costs.
- 11 It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 12TH DAY OF OCTOBER, 2023.

E. O. OBAGA

JUDGE

IN THE VIRTUAL PRESENCE OF;

Mr. Kibii for defendant.

Court Assistant – Brian

E. O. OBAGA

JUDGE

12TH OCTOBER, 2023

