

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 36 OF 2019

ANNAH KIMITEI (Suing as the Legal Representative of the

Estate of the late NYONGOIO KIMITEI.....PLAINTIFF

VERSUS

JAMES KIPROP MITEL.....1ST DEFENDANT

JUSTINE KIPLIMO ROTICH.....2ND DEFENDANT

LEAH CHEBET KIMUTAL.....3RD DEFENDANT

RONCERS KARMAIT MURKOMEN.....4TH DEFENDANT

JUSTINE KIPLIMO ROTICH.....5TH DEFENDANT

GEOFFREY KIPROTICH KOMEN.....6TH DEFENDANT

DANIEL MURKOMEN.....7TH DEFENDANT

RULING

The application dated 26.6.2019 is made by the 1st defendant who seeks the execution of the orders made on 12.3.2019 be discharged, reviewed or be set aside for being obtained by concealment as the 1st defendant was not served. He prays that subdivision, encroachment, trespass and destruction by the plaintiff and her agents be stopped. The gist of the grounds and supporting affidavit of James Kiprop Mitei is that the orders have been misinterpreted and misused to evict the 1st defendant. Moreover, the orders have been used to destroy the 1st defendant's crop of wheat and to block access to his house and *shamba*. The parties however, are related being wife and son of the deceased Nyangio Kimitei to whom the estate of the suit property belongs. According to the 1st defendant, the property will be dealt with by the court dealing with the succession cause.

Annah Kimitei states in the replying affidavit that the court issued the orders after being satisfied that the application was served. The orders are necessary to pre-empt the 1st defendant from selling the suit property. The plaintiff denies having destroyed the 1st defendant's crop and having attempted to evict the 1st defendant.

I have considered the application, supporting affidavit and the replying affidavit and do find that the orders of the court made on 12.3.2019 were given after the court was satisfied that the defendant had been served. There are no grounds for setting them aside. However, the orders appear to have been misused to destroy the property of the 1st defendant.

In that regard, I do order in addition that the plaintiffs be restrained from evicting the 1st defendant or interfering with his utilization of the suit parcel until hearing and determination of the suit.

The police should continue with investigating the destruction of the wheat and the fence surrounding the parcel of land.. No order as to costs.

Dated and delivered at Eldoret this 3rd day of July, 2019.

A. OMBWAYO

JUDGE