



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

LAND CASE NO. 27 OF 2021

DICKSON KENDAGOR CHEPKIOT.....1ST PLAINTIFF

CHRISTOPHER KOECH CHEPKIOT.....2ND PLAINTIFF

VERSUS

SIMON CHERUIYOT1ST DEFENDANT

SOLAI RUIYOBEI FARM.....2ND DEFENDANT

RULING

1. The Plaintiff filed the Notice of Motion dated **13th May 2021** under **Order 40 rule 1(a) and (b), 2, and 4(1), 10, Order 50 rule 1** of the **Civil Procedure Rules** and **Section 3A** of the **Civil Procedure Act** in which he seeks an order of temporary injunction to restrain the 1st defendant or his agents from interfering with the suit land pending the hearing and determination of the suit or until further orders of this court.

2. The suit land is described in the plaint and the application as **Plots Nos 808 and 809**. It is alleged that the two plots had been issued to the 1st and 2nd plaintiffs in **1992** who had taken possession thereof which was signified by fencing them off. In addition the 2nd defendant had given the two plaintiffs land ownership certificates, copies of which are exhibited in the application.

3. The plaint states that the 1st defendant has been uprooting the plaintiffs' fence and he has been delivering them to the local police station and the plaintiffs have therefore thereby sustained damage in terms of repair costs and *mesne profits*.

4. It is alleged by the plaintiffs that there is another case to wit **Nakuru ELC 532 of 2013** regarding the suit land and that an order of the preservation of its *status quo* has been made in that suit and the doctrine of *lis pendens* applies to it.

5. The application is supported by the sworn affidavit of the 1st plaintiff which was sworn on **3/3/2021**. He reiterates the matters set out in the plaint and avers that his attempts to resolve the matter through the local administration failed to bear fruit. He states that the 1st defendant entered the suit land in December **2019** and began farming maize thereon. He states that the 1st defendant is about to till the suit land and sow crops thereon and that the action would deny the plaintiffs use and enjoyment of the land. He accuses the 1st defendant of trespass. He states that it is in the interests of justice that the status of the property be preserved pending the hearing and determination of the suit. In another **paragraph no 17** of the affidavit he states that the plaintiffs are in possession and the 1st defendant is only a trespasser.

The response.

6. I have perused through the court file record and I have found no response filed by any of the defendants. Counsel for the 2nd respondent however had indicated to the court on **28/6/2021** that the 2nd defendant supported the application by the plaintiffs.

Submissions.

7. I have perused the file record and found no submissions filed on behalf of the parties.

8. Determination.

9. The principal issue for determination is whether the order sought can issue. The application seeks an order of temporary injunction. I have perused the application and the annexures thereto and found that the plaintiffs have established a *prima facie* case with a probability of success. I have some doubt that the loss they would sustain if the orders were not granted would not be capable of being redressed by an

award of damages. However as the balance of convenience tilts in favour of issuing the orders sought in order to preserve the subject matter from any deprecation by the 1st defendant I find that I should issue the orders sought.

10. Consequently I hereby grant **prayer no 2** of the notice of motion dated **3/3/2021**. The costs of the application shall be in the cause.

DATED, SIGNED AND ISSUED AT NAKURU VIA ELECTRONIC MAIL ON THIS 19TH DAY OF OCTOBER, 2021.

MWANGI NJOROGI

JUDGE, ELC, NAKURU