



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

ELC NO. 139 OF 2016

ELPHAS KIPKORIR TALA (Suing as person representatives of the Estate of the late)

CHRISTOPHER KIPTALAM SANG.....1ST PLAINTIFF

CECILIA JEROTICH KIRUI.....2ND PLAINTIFF

VERSUS

JOSEPH KIPCHUMBA ROP.....DEFENDANT

RULING

1. This is a ruling in respect of Notice of Motion dated 8th February, 2021 in which the Plaintiff in the counter claim seeks an injunction against the Plaintiffs in the main suit who are now the Defendants in the counter claim.
2. This is an example of how delay in prosecution of cases in an expeditious manner can cause unnecessary confusion of issues. When this suit was filed on 27th May, 2016 the Plaintiffs contemporaneously filed an application for injunction in which they claimed that the Defendant had invaded the suit property immediately after the demise of their mother. The Plaintiffs mother had passed on on 25th March, 2012.
3. The Plaintiff's application came up for hearing on 8th June, 2016 when the court granted interlocutory injunction and the matter was set down for hearing on 20th July, 2016. On 20th July, 2016, the application could not proceed as the judge was not satisfied with the kind of service which had allegedly been affected upon the Defendant. The application was adjourned to 17th August, 2016, but the court record does not show what happened on 17th August, 2016.
4. As the matter was pending, the 1st Plaintiff passed on and had to be substituted. On 31st October 2017, this suit was stayed pending hearing and determination of Eldoret Succession Cause NO.158 of 2014. On 15th February, 2021, the present application was placed before Lady Justice (Dr) Odeny who ordered that status quo be maintained while observing that this suit had been stayed pending conclusion of the Succession Cause. The court then fixed the matter for mention on 17th March, 2021 for further directions. There is no record of what happened on 17th March, 2021.
5. On 19th March, 2021 a representative of the Plaintiffs' Advocate fixed a date for hearing of the present application ex-parte for 8th April, 2021. Hearing notice was to issue. There is no evidence that the Applicants' advocates were served for the hearing of 8th April, 2021. The Respondents' counsel applied for dismissal of the Applicant's application but the court declined to do so instead giving a date for the application on 28th April, 2021.
6. The record shows that on 28th April, 2021, the parties requested that they canvass the application dated 8th February, 2021. The request was granted. I have given the details to show that the order of the court staying the proceedings herein had not been vacated but the parties continued urging the court to deal with the current application despite there being an order staying the proceedings herein.
7. It is clear that the injunction orders which were granted on 8th June, 2016 were obtained without material disclosure. The defendant who is the Plaintiff in the counter-claim was on the suit property before 2012, when the Plaintiffs' mother died. The defendant's father had filed a case against the Plaintiffs' mother in SPMCC No.16 of 1988. It is therefore not possible that the Defendant invaded the suit property in 2012.
8. The proceedings in this case were stayed on 31st October, 2017. Orders of maintenance of status quo were given on 15th February, 2021.

In the interest of justice, the orders of maintenance of status quo should be sustained until Succession Cause No.158 of 2014 is heard and determined. The Applicant should not have filed the present application in the face of stay of proceedings and the Advocates for the parties should not have pushed for hearing of the application. I make no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 25TH DAY OF NOVEMBER, 2021.

E.O. OBAGA

JUDGE

IN THE VIRTUAL PRESENCE OF;-

MR. OMUSUNDI FOR PLAINTIFF

COURT ASSISTANT – MERCY

E.O. OBAGA

JUDGE