



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC NO.E025 OF 2021

DAVID KIPTOO CHELUGET.....PLAINTIFF/APPLICANT

AND

ABRAHAM KIPRUTO CHELUGET.....1ST DEFENDANT/RESPONDENT

MIKE KIPKORIR CHELUGET.....2ND DEFENDANT/RESPONDENT

JOB KIPKEMEI CHELUGET.....3RD DEFENDANT/RESPONDENT

JOHN KIPKEMBOI CHELUGET.....4TH DEFENDANT/RESPONDENT

RULING

1. This is a ruling in respect of two similar Preliminary Objections raised by the 1st to 4th Defendants on the ground that this suit offends section 6 of the Civil Procedure Act. The Plaintiff in this case is the biological father of all the four Defendants. The Plaintiff, the four Defendants as well as the mother of the Defendants are registered owners of **LR No.Uasin-Gishu/Kormaet Scheme/57** (suit property).

2. On 8th December, 2020, the Plaintiff filed a suit against two of his sons in ELC 115 of 2020 in which he sought that the portion utilized by the two sons be reverted to him. The suit property is said to be 150 acres. The Plaintiff is utilizing 50 acres thereof, whereas the Defendants are utilizing 100 acres thereof.

3. While ELC 151 of 2020 was pending, the Plaintiff again filed the present suit on 23rd April, 2021 in which he now seeks to bar all the four Defendants from occupying or constructing any portion of the suit property. He contemporaneously filed an application for temporary injunction barring the four Defendants from occupying or utilizing any portion of the suit property. Before the Plaintiff could prosecute the application for injunction, he filed another application on 19th May, 2021 in which he seeks to be allowed to sell two acres out of the suit property to enable him pay school fees for his two daughters who are studying in foreign universities.

4. The Plaintiff is said to be aged about 95 years. The parties were directed to file written submissions in respect to the two Preliminary Objections. It is only the Defendants who filed their submissions. I have considered the submissions by the Defendants with regard to the two Preliminary Objections. This is a very unfortunate case where a father who is advanced in age is forced to do cases with his sons. This is a matter which should be dealt with in an amicable manner.

5. **Section 6 of the Civil Procedure Act provides** as follows:-

“No Court shall proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or other Court having jurisdiction in Kenya to grant the relief claimed”.

6. It is clear from **the Provisions of Section 6 of the Civil Procedure Act (Supra)** that the present suit is subjudice. I proceed to stay the present suit. The Plaintiff should pursue **ELC 115 of 2020** but I strongly urge the parties to give **Mediation a chance if they wish to pursue ELC 115 of 2020**. I make no order as to costs as the parties herein are related.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 18TH NOVEMBER, 2021

E.O. OBAGA

JUDGE

IN THE VIRTUAL PRESENCE OF;

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COURT ASSISTANT – MERCY

E.O. OBAGA

JUDGE