



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC CASE NO. 7 OF 2021

WILSON TANUI

AMOS KIPLAGAT

RICHARD KOMEN

(Suing as officials of Kapkiagut Clan Land Cheptebo Group

on behalf of members of Kapkiagut Clan.....PLAINTIFFS

VERSUS

SAMSON KIMAIYO (Sued as the administrator of the estate of the

late WILLIAM KEMBOI..... 1st DEFENDANT

JOSEPH MOGEN..... 2nd DEFENDANT

WILLIAM KIRUI.....3rd DEFENDANT

NICHOLAS KIBII KIGEN.....4th DEFENDANT

WILSON KIMUGE.....5th DEFENDANT

MICHAEL KIPROTICH KATAM6th DEFENDANT

KIBII BOIYO.....7th DEFENDANT

KIGEN CHEPKIYENG..... 8th DEFENDANT

KIPKEMOI CHEMITEI SIRMA..... 9th DEFENDANT

TOMINING KIPYUK.....10th DEFENDANT

JOHN KOMEN..... 11th DEFENDANT

MICHAEL CHERUIYOT..... 12th DEFENDANT

MICHAEL KANGOGO..... 13th DEFENDANT

JOSEPH KIPLAGAT KANGOGO.....14th DEFENDANT

MOHAMMED TOROITICH.....15th DEFENDANT

LUKA KIPRUTO KWAMBAL..... 16th DEFENDANT

RULING

1. This is a ruling in respect of a Notice of Motion dated 27th January, 2021 in which the Plaintiffs/Applicants seek the following orders:-
 - a) Spent
 - b) Spent
 - c) The Defendants by themselves, their servants/agents/employees and/or any other persons acting on their behalf be restrained by way of a temporary injunction from further interfering, alienating and/or in any way adversely dealing with suit parcels known as **KIBARGOY/LOWER CHEPTEBO/295, 362, 363, 364, 365, 378, 379, 382, 383, 384, 386, 387, 388, 380, 381, 385** pending the hearing and determination of the substantive suit.
 - d) The orders herein be enforced by the OCS Sigot Police Station.
 - e) The costs of this application be provided for.
2. The Applicants aver that they are officials of Kapkiagut clan land Cheptebo who have filed this suit on behalf of Kapkiagut clan. The Applicants contend that during the process of adjudication of Lower and upper Cheptebo area of Elgeyo Marakwet County, some parts of the area occupied by the Kapkiagut clan had the adjudication process completed. After objection proceedings and appeals were completed, the Applicants' members allowed LR No.Kibargoy/Lower Cheptebo/295, 362, 363, 364, 365, 378, 379, 382, 383, 384, 386, 387, 388, 380, 381 and 385 registered in the name of William Kemboi to hold the same in trust for the clan.
3. The Applicants contend that the Defendants/Respondents have been trespassing on the suit properties and carrying out acts which are inconsistent with the Applicants' beneficial interest in the suit properties. It is on this basis that the Applicants want injunctive orders against the Respondents.
4. The Respondents have opposed the Applicants' application based on a replying affidavit sworn on 23rd April, 2021. The Respondents state that they purchased their respective parcels from Cheptebo Group and that they have lived on the suit lands for over 50 years. The Respondents contend that they have carried out extensive developments on the same and that to grant an injunction in favour of the Applicants will amount to granting an eviction against them.
5. The parties herein were directed to file written submissions on 26th April, 2021. On 6th of July, 2021, the period for filing submissions was extended by another 14 days. The Respondents filed their submissions on 7th October, 2021. Though the Applicants were given seven days within which to file theirs from 7th October, 2021, as at 9th November, 2021, they had not filed any and if any were filed then they are not in the file.
6. I have considered the Applicants' application together with the opposition to the same by the Respondents. I have also considered the submissions by the Respondents. The only issue for determination is whether the Applicants have met the threshold for grant of an injunction. The principles for grant of a temporary injunction were well stated in the case of **Giella =vs= Cassman Brown & Co.Ltd [1973] EA 358** as follows:-

"The conditions for the grant of interlocutory injunction are now, I think well settled. First, an Applicant must show a Prima Facie case with a probability of success. Secondly, an interlocutory Injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award in damages. Thirdly, if the court is in doubt, it will decide an application on a balance of convenience."
7. A prima facie case was defined in the case of **Mrao Ltd =vs= First American Bank of Kenya Ltd [2003]** as follows;

"...in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exist a right which has apparently been infringed by the opposite party so as to call for an explanation or rebuttal from the latter."
8. Other than the copies of titles in the name of the late William Kemboi, the Applicants have not annexed any other document to show that they are officials of Kapkiagut clan or Cheptebo Group. There is nothing annexed to the application to show the alleged objection proceedings or appeals to the Minister which paved way for registration of the late William kemboi. In the absence of this, I do not see what prima facie case the Applicants have.
9. It appears that the Respondents have been residing and are residing on the suit properties for decades. This perhaps explains why the Applicants want Police assistance to go and evict the Respondents. It is clear from the affidavit in support of the application and the replying affidavit that the late William Kemboi may have been registered as proprietor of the suit parcels to hold the same in trust for the community. If this be the case, this will come out during the hearing. There is no threat that the suit properties are in danger of being sold.
10. There is no material on which this court can hold that the Respondents purchased the suit properties from Cheptebo Group. As I have said hereinabove, there is no threat of sale and even if there was to be any sale, the acreage of the suit properties are known and the Applicants will always be compensated in case they succeed in their case.
11. It is apparent that the Respondents are in occupation according to the replying affidavit which has not been contradicted. The balance of

convenience therefore tilts in their favour. An injunction whose effect will be eviction cannot be granted. I therefore find no merit in the Applicants' application which is hereby dismissed with costs to the Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 11TH NOVEMBER, 2021

E.O. OBAGA

JUDGE

In the virtual presence of;

M/S. Kinyua for Mr.Kibii for 2nd to 16th Defendant

Court Assistant – Mercy

E.O. OBAGA

JUDGE