



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L MISCELLANEOUS APPLICATION NO. 15 OF 2019

CHESERET ARAP KORIR.....APPLICANT

VERSUS

EQUATORIAL LAND HOLDINGS LIMITED.....RESPONDENT

RULING

1. The Applicant moved the court through the Motion dated 19th July, 2019 seeking for maintaining of *status quo* ordered on 1st March, 2019 in **Eldoret ELC No. 127 of 2018** and restraining of the Respondent from carrying on any activity on the suit land pending the hearing and determination of the Applicant's Motion to set aside the arbitral award and the Respondent's application to adopt the award. He also prays in the alternative for the court to call Eldoret ELC No. 127 of 2018 and stay delivery of the ruling pending the hearing and determination of the applications for setting aside and adoption of the award. The Applicant also prays for costs. The application is based on the ten (10) grounds on its face and supported by the undated affidavit sworn by the Applicant and filed with the Motion.

2. The application is opposed by the Respondent vide the replying affidavit sworn by David May, the Managing Director on the 26th July, 2019.

3. The learned Counsel for the Applicant filed the written submissions dated the 20th September, 2019. There are no submissions by the learned Counsel for the Respondent in the record.

4. The following are the issues for the court's determinations;

(a) Whether the Applicant has made a reasonable case for granting the status quo and injunctive order sought or alternatively whether the Applicant has made a reasonable case for staying the ruling pending in Eldoret ELC No. 127 of 2019, pending the hearing and determination of the parties' application dated 6th May, 2019 and 10th June, 2019.

(b) Who pays the costs?

5. The court has carefully considered the grounds on the application, the affidavit evidence, the written submissions, the record and come to the following conclusions;

(a) That the ruling sought to be stayed in the alternative prayer (3) in Eldoret ELC No. 127 of 2018 was reportedly delivered on the 23rd July, 2019 as per paragraph 9 of the Respondent's replying affidavit, which deposition has not been challenged by the Applicant. That it follows that the status quo dictated through the court order of 1st March, 2019 in Eldoret ELC No. 127 of 2018 that Applicant sought to be maintained under prayer (2) was definitely altered vide the ruling delivered on the 23rd July, 2019.

(b) That further to the finding in (a) above, the Motions dated 6th May, 2019 and 10th June, 2019 that Applicant wanted to be heard and determined first have today been determined through an earlier ruling and therefore prayers (2) and (3) have been overtaken by events.

(c) That the Applicant having failed in both prayers is in accordance with **Section 27 of the Civil Procedure Act Chapter 21 of Laws of Kenya** obligated to pay the Respondent's costs.

6. That in view of the foregoing, the Applicant's Motion dated the 19th July, 2019 has no merit and is dismissed with costs.

Orders accordingly.

Dated and signed at Eldoret this 26th day of February, 2020.

S. M. KIBUNJA

JUDGE

Ruling read in open court in the presence of:

Mr. Kimani for Applicant.

Mr. Menezes & Maganga for Respondent.

Court Assistant: Christine