



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 3 (OS) OF 2019

JAMES CHIRCHIR CHEROP.....PLAINTIFF

VERSUS

KWAMBAI ARAP SETURWO.....DEFENDANT

RULING

1. **James Chirchir Cherop**, the Plaintiff, seeks for temporary injunction order restraining **Kwambai Arap Seturwo**, the Defendant, by himself or agents from interfering or dealing adversely with the part of the land **E/Marakwet/Kessup "B"/867** belonging to the Plaintiff, pending the hearing and determination of the suit or alternatively, the *status quo* on the use of the said land remain as it was from 7th March, 2017 to the filing of the suit. The application is based on the nine (9) grounds on its face and supported by the affidavit sworn by James Chirchir Cherop on the 2nd May, 2019.

2. The application is opposed by Kwambai Arap Seturwo, the Defendant, through his replying affidavit sworn on the 7th October, 2019.

3. The Court granted prayer (4) *ex parte* which is for the parties to maintain status quo on the 20th May, 2019 and directed that the application to be served. That when the application came up for hearing on the 7th October 2019, the learned Counsel for the parties consented to file written submissions. The Counsel for the Plaintiff and Defendant subsequently filed the written submissions dated 15th January, 2020 and 18th February, 2020 respectively.

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

(a) Whether the Plaintiff has established a prima facie case with a probability of success for temporary restraining or status order to issue at this stage.

(b) Who pays the costs?

5. The Court has carefully considered the grounds on the Motion, the affidavit evidence, submissions and come to the following findings;

(a) That it is conceded that the Plaintiff has been in possession of a portion of the suit land. That has been confirmed by the Defendant through paragraph 12 of his replying affidavit that the **"Plaintiff was cultivating the said parcel of land for some period of time with my lawful authority"**.

(b) That while the Defendant is the registered proprietor of the suit land and noting that the Plaintiff's claim is based on adverse possession of a portion thereof, and further as the Plaintiff has deponed to, and annexed documents confirming damages caused on that portion of the suit land, it is only fair that the parties do maintain the *status quo* as ordered on 20th May, 2019 pending the hearing and determination of this suit.

(c) That in view of the relationship between the parties, and the nature of the dispute between them, the costs of the application will abide the outcome of the suit.

6. That in view of the foregoing, the Court finds merit in the Plaintiff's Motion dated the 16th May, 2019 which is hereby allowed in the following terms;

(a) That the *status quo* order of 20th May, 2019 in terms of prayer 4 of the application is hereby confirmed to remain in force

pending the hearing and determination of this suit.

(b) The costs of the application abide the outcome of the suit.

Orders accordingly.

Dated and signed at Eldoret this 7th day of May, 2020.

S. M. KIBUNJA

JUDGE

Ruling read in the absence of all the Parties/Counsel and is to be transmitted digitally by the Deputy Registrar through the online media given by Counsel/Parties.

Court Assistant: Christine