



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

E&L CASE NO. 382 OF 2017

JESUGUT TAMINING KIPROTICH.....PLAINTIFF/APPLICANT

VERSUS

ANTHONY KIPKETER ROTICH.....DEFENDANT/RESPONDENT

RULING

This ruling is in respect of an application dated 13th May 2020 seeking the following orders:

a) Spent.

b) A temporary injunction be and is hereby issued restraining the defendant/respondent his servants and or agents from trespassing into, fencing, constructing upon and or further construction upon, selling, transferring, encumbering and or otherwise interfering with land parcel No. **CHEPTIRET/CHEPLASKEI BLOCK 3(SERTWET)256** pending the hearing of this application.

c) A temporary injunction be and is hereby issued restraining the defendant/respondent his servants and or agents from trespassing into, fencing, constructing upon and or further construction upon, selling, transferring, encumbering and or otherwise interfering with land parcel No. **CHEPTIRET/CHEPLASKEI BLOCK 3(SERTWET)256** pending the hearing and determination of this suit.

d) Costs of this application be provided for.

This application was filed under certificate of urgency during the COVID -19 pandemic when the court ordered that the application be served electronically and submissions be filed within 14 days. The matter came up for mention but the respondent though served had neither filed a response nor submissions.

PLAINTIFF/APPLICANT'S CASE

Counsel filed submissions and relied on the supporting affidavit and the grounds in support of the application that the applicant is the registered owner of the suit parcel of land. Further that the applicant holds the original title deed to the suit land and has never given anyone authority to deal in the suit land. The defendant has never filed a defence to the applicant's claim.

It was counsel's submission that the respondent has taken advantage of the pandemic and started construction of a permanent house on the suit land as per the annexed photographs to the application. That the plaintiff/applicant has established a prima facie case as was enunciated in the case of **Giella Casman Brown Case** by showing that he is the registered owner of the suit land.

Mr. Okara counsel for the plaintiff relied on the case of In the case of **MAWNZI =VS= INTERNATIONAL UNIVERSITY' & ANOTHER (1976-80) KLR 229**, where Madan J stated:-

“It would be a poor and insufficient system of justice, unethical to contemplate, if a successful Plaintiff is forced to litigate again and again to restore the status quo either by further proceedings in the same suit or by fresh suit if the property in dispute is transferred to a third party. The court must therefore protect the status quo.

Counsel therefore urged the court to protect the status quo as if the order is not granted, the plaintiff/applicant will suffer irreparable harm.

The respondent never filed any response to the application.

ANALYSIS AND DETERMINATION

This is an application for temporary injunction. The principles for grant of injunctions are that an applicant must establish a prima facie case with a probability of success, that if the order is not granted he or she will suffer irreparable damage which cannot be compensated by way of damages and lastly that if the court is in doubt then it should rule on a balance of convenience. On whose favour the balance of convenience tilts.

This application is not defended therefore the averments of the applicant have not been controverted. This does not mean that when a matter is undefended the burden of proof is suspended. The applicant still has an obligation to meet the threshold for grant of injunctions. An application might be uncontroverted but if the applicant does not convince the court with the facts then the same can still be dismissed.

I find that the applicant has proven that she is the registered owner of the suit land vide annexure JTK2 which is a title deed. Annexures JTK3 (a) – (d) contains photographs of the construction that has begun on the suit land. It is evident that if the respondent is not stopped the applicant will be unable to utilize the suit property and suffer irreparable damage.

I have considered the application, the annexures and the submissions by counsel and come to the conclusion that the plaintiff/applicant deserves the orders of a temporary injunction plus cost of the application.

DATED and DELIVERED at ELDORET this 24th DAY OF JUNE, 2020

M. A. ODENY

JUDGE