



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ELDORET**

**ELC CASE NO.99 OF 2019**

**GIDEON SEREM KIPSANG.....PLAINTIFF/APPLICANT**

**VERSUS**

**MICHAEL KIPCHUMBA CHEPKWONY.....DEFENDANT/RESPONDENT**

**RULING**

This ruling is in respect of an application dated 5<sup>th</sup> May 2020 by the defendant/applicant seeking for the following orders:

- a) That pending the hearing and determination of this application the honorable court be pleased to restrain the plaintiff, his agents, servants or employees from threatening, chasing, ploughing or interfering in any way with the plaintiff's suit land or his family on the parcel of land known as Plot No. 2045 Salawa Adjudication Section.
- b) That pending the hearing and determination of this suit the honorable court be pleased to restrain the plaintiff, his agents, servants or employees from threatening, chasing, ploughing or interfering in any way with the plaintiff's suit land or his family on the parcel of land known as Plot No. 2045 Salawa Adjudication Section.

This matter was filed by the defendant /applicant vide a certificate of urgency whereby the court ordered that the same be served and submissions be filed due to the COVID 19 pandemic. Both parties complied with the court order and filed submissions.

**DEFENDANT/APPLICANT'S SUBMISSIONS**

Counsel for the applicant submitted that the application is based on the grounds that the defendant is the registered owner of Plot No. 2045 Salawa Adjudication Section and that the plaintiff respondent forcefully entered the land and interfered with the defendant's workers, family and chased away the tractor which was ready to plough the land on 22<sup>nd</sup> April 2020.

It was counsel's submission that the plaintiff/respondent filed a case vide Kabarnet SPMC E&L No. 10 of 2018 which was struck out and the appeal was dismissed. Counsel further submitted that the Land Adjudication Board had issued status quo orders that the applicant continues with possession until all the matters are determined thus the present case filed is in bad faith.

Counsel also submitted that the applicant has been ploughing at least four acres every year and unless the plaintiff is restrained by an order of injunction, he stands to suffer greatly as he will not harvest this season.

**PLAINTIFF/RESPONDENT'S SUBMISSIONS**

Counsel for the plaintiff /respondent submitted that the applicant's claim to be the registered owner of this not tenable as he has not tendered any evidence to show the same apart from the letter from the Land Adjudication Officer, Baringo County. Counsel also stated that the prayers sought in the application are similar to the prayers sought by the plaintiff respondent in the main suit and would be just and fair that the suit proceeds to full hearing.

Mr. Kiplagat counsel for the plaintiff/respondent relied on the case of **Wilson Amwayi Bonge vs Priscilla Sulwe & 2 others (2018) eKLR** where Justice Matheka dismissed a similar application for lack of merit. Further, that the suit parcel of land is no longer under adjudication as the adjudication register is complete.

Counsel therefore urged the court to dismiss the application with costs to the respondent as the applicant has not proved his case on a balance of probabilities.

## **ANALYSIS AND DETERMINATION**

The issues for determination in an application for interlocutory injunctions are as per the principles set out in the case of Giella Casman Brown case. An applicant must establish that he or she has a prima facie case with a probability of success, that the applicant will suffer irreparable harm and damages would not be an adequate remedy and finally that where the court is in doubt, it will consider the case on a balance of convenience.

The court had ordered that the application be canvassed by way of written submission which were duly filed. I notice from the submission filed by counsel for the applicant that the same does not support the application filed. It seems that the argument is for the suitability of the suit and the jurisdiction of the court. If counsel is disputing the jurisdiction of the court and the suitability of the plaintiff/respondent's claim, then the applicant has no business applying for injunction in the same suit.

In essence the court is at a loss on what the submissions were responding to. In fact, at one point the court thought that the submissions were in opposition to the application. I therefore will not look at the principles of grant of injunctions as the applicant has not attempted to meet the threshold. The applicant claims to be a registered owner but there is no evidence of such ownership. The applicant has further not shown that he will suffer irreparable harm that is not capable of being compensated by damages.

Ultimately the court finds that the balance of convenience would tilt in favour of the respondent. The application lacks merit and is therefore dismissed with costs to the respondent.

***DATED and DELIVERED at ELDORET this 8<sup>TH</sup> DAY OF JULY, 2020***

***M. A. ODENY***

***JUDGE***