



**REPUBLIC OF KENYA**

**High Court at Eldoret**

**Civil Suit 70 of 2012**

**EVALINE JOPKORIR RONO ..... PLAINTIFF**

**=VERSUS=**

**CHRISTOPHER T. KIPLAGAT ..... 1ST DEFENDANT**

**PHILIP KIPCHUMBA TUITOEK ..... 2ND DEFENDANT**

**LUKA K. KIMENGICH ..... 3RD DEFENDANT**

**ITEN LAND DISPUTES TRIBUNAL ..... 4TH DEFENDANT**

**JOHN C. CHEBIEGO ..... 5TH DEFENDANT**

**KIZITO KIBET KIPTUM ..... 6TH DEFENDANT**

**RULING**

This ruling is in respect to 2 applications. The said applications are both for injunctive reliefs, and have been brought by the two opposing parties.

In order to appreciate the circumstances prevailing, it is vital to first provide a brief background to the case before me.

On 17th April, 2012, the Plaintiff, EVALINE JEPKORIR RONO, instituted proceedings against four Defendants, namely:- CHRISTOPHER T. KIPLAGAT; PHILIP KIPCHUMBA TUITOEK; LUKA K. KIMENGICH; and ITEN LAND DISPUTES TRIBUNAL.

Through that plaint, the Plaintiff sought a declaration that the award made by the Iten Land Disputes Tribunal, in relation to the suit property, was a nullity. She also asked the court to declare that the land in issue was a total of 9.0 acres; and not 0.6 acres.

Thirdly, the Plaintiff wished to have the court order the consolidation of the property in issue, so that, thereafter, the register could be rectified to reflect that fact.

The other relief sought by the Plaintiff was a permanent injunction to restrain the Defendants from mutilating the suit property and giving it to other parties.

Finally, the Plaintiff asked to be awarded the costs of the suit.

On the following day, (i.e 18th April, 2012), the Plaintiff was sued by JOHN C. CHEBIEGO and KIZITO KIBET KIPTUM.

Through their plaint, those 2 parties asserted that the Plaintiff had threatened to enter onto their respective plots and build on or plough the same. As the 2 gentlemen asserted ownership of the land in issue, they sought an injunction to restrain the Plaintiff from claiming ownership of the same.

Each of the plaints was accompanied with an application for an interim injunctive relief. On 27th June, 2012, the Court ordered that this case be consolidated with HCCC No. 73 of 2012. Thereafter, on 31st October, 2012, the court ordered that further proceedings would proceed in the case file No. 70 of 2012. It is for that reason that the Plaintiff in that suit is cited as the Plaintiff in this Ruling.

As the two opposing sides cannot both be Plaintiffs in the consolidated case, it follows that Messrs JOHN C. CHEBIEGO and KIZITO KIBET KIPTUM, are Defendants.

In the circumstances, their plaint is now deemed to be the Counter-claim against the Plaintiff. I have so directed because there cannot be 2 separate sets of plaints and Plaintiffs in one case. One party to any one case ought to be the Plaintiff, whilst the other party is a Defendant.

I am alive to the fact that the Plaintiffs in the original HCCC No. 73 of 2012 are not the same persons as the Defendants in this case, HCCC No. 70 of 2012.

The only constant party in the 2 suits was the Plaintiff herein. In one case, she seeks an interim injunction, whilst in the other case, an injunction is sought against her.

It strikes me that the consolidation of the two cases may not have been the most prudent decision in the prevailing circumstances. I say so because the grant of an interim relief in favour of the Plaintiff, in her own claim, need not necessarily also lead to a failure in the application lodged against her in the other suit.

This observation is crucial because in the ordinary cases, the success of a Plaintiff's application ordinarily also implies the failure of the counter-claim against the said Plaintiff.

But in this case, the Plaintiff could succeed against some of the Defendants, yet proceed to lose against other Defendants. In the same way, one set of Defendants might lose against the Plaintiff and proceed to win against the other Defendants. The third option is that the Defendants could both lose to the Plaintiff.

And the fourth option would see the Plaintiff succeed against both sets of Defendants.

CHEBIEGO and KIPTUM both lay claim to the ownership of the suit land. Having purchased the land, they instructed surveyors. The said surveyors commenced the process of registering the mutation, with a view to getting title deeds. KIZITO KIBET KIPTUM swore an affidavit stating, inter alia;

***“ 5. That recently, the defendant/respondent herein moved into our land and threatened to build a house, plough and plant on our above referred land during this year's maize planting season.***

***6. THAT though we are yet to get further legal documents, we are apprehensive that the Defendant/respondent will live up to her***

***threats.”***

Noting that MR. KIPTUM was talking in plural terms, one would have imagined that he was making reference to matters that were done by him and JOHN C. CHEBIEGO.

But MR. KIPTUM actually indicated that the transaction that he was talking about was one in which he purchased plot No. 602 jointly with OSCAR KEMBOI KIPCHUMBA. On his part, JOHN C. CHEBIEGO said that he bought plot No. 603. He also said that the Plaintiff herein had recently moved onto that parcel of land, and threatened to use it.

Neither JOHN CHEBIEGO nor KIZITO KIPTUM have revealed the dates when they allegedly purchased their respective portions of land. Secondly, this court has not been told about why OSCAR KEMBOI KIPCHUMBA was not enjoined to the proceedings, whereas MR. KIPTUM had asserted that he bought plot No. 602 jointly with him.

In their submissions, CHEBIEGO and KIPTUM assert that the Plaintiff has failed to demonstrate that she is in occupation of the suit land. That submission is not in consonance with the averments in the affidavits of those two gentlemen. In the said affidavits, both of them said that they were seeking injunctive reliefs because the Plaintiff had recently moved onto the suit lands.

CHEBIEGO and KIPTUM also argue that the law requires that anyone claiming interest in land, must have documentary evidence. They have not, however, made available to this court any Agreement of Sale, to show who they purchased their plots from, when those transactions took place; and the considerations for the same.

Extracts of an alleged register, cannot, of themselves, constitute proof of the alleged transactions.

In contrast, the Plaintiff has put forward receipts issued by KIPSOEN/KAPTEREN YOUTH DEVELOPMENT GROUP, showing that the said group received a total of Kshs 45,000/= from her late husband, FRED BARSIRON ROGHO.

The said money was paid in respect of land which FRED BARSIRON ROGHO was buying. There are contentions that the Plaintiff's husband did not meet some deadlines which had been set for the payment of the purchase price. However, at this stage, there is no evidence of any such deadlines which has been placed before me.

Secondly, if there had been deadlines, it would be interesting to hear from the Vendors why they received payment after such deadlines.

Another issue which I have taken note of is that the Tribunal which adjudicated in the respect of Claim No. 9 of 2010, acknowledged that it lacked jurisdiction, and it referred the dispute to the High Court. That decision is dated 27th September, 2010.

Having given due consideration to the applications, I now make the following findings;

- (1) On a *prima facie* basis, the Plaintiff's husband paid for 9 acres of land;**
- (2) The Plaintiff was in actual possession of the land over which she is feuding with the Defendants;**
- (3) Neither the Plaintiff nor the Defendants appear to have any Agreements of Sale or title documents for the portions of land they are claiming;**
- (4) On a *prima facie* basis; there is a doubt as to who owns what portion of land, out of the parcels being fought over;**
- (5) However, as the Plaintiff is an actual possession, the balance of convenience tilts in her favour;**
- (6) Accordingly, I now reject the Defendants' application;**
- (7) I grant the Plaintiff's application and order that the Defendants be restrained from interfering with the Plaintiff's peaceable enjoyment and use of the suit land until the suit is heard**

and determined;

(8) The Defendants are also hereby restrained by this Interim injunction from dealing with L.R. No. 9130 in any manner until this suit is heard and determined. For the avoidance of any doubt, the word “dealing” as used in this order shall include the sub-division, transfer of the whole or any part thereof, or the creation of encumbrance over the suit land;

(9) The Plaintiff shall have the costs of the application.

DATED, SIGNED AND DELIVERED AT ELDORET,

THIS 8TH DAY OF MAY, 2013.

FRED A. OCHIENG

JUDGE.