



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 599 OF 2012

SAMUEL RONO & 32 OTHERS.....PLAINTIFFS

VERSUS

JOEL KOMEN & 33 OTHERS.....DEFENDANTS

AND

DAVID CHEBOI

GRACE KIPKERING

JOHN M. KORIR

MUSA KORIR

DAVID CHEPTOO.....PROPOSED INTERESTED PARTIES

RULING

[NOTICE OF MOTION UNDER CERTIFICATE OF URGENCY DATED 19TH JUNE, 2020]

1. The five Proposed Interested Parties, hereinafter referred to as the Applicants, filed the Motion under Certificate of Urgency dated the 19th June, 2020, seeking for an injunction order restraining the Plaintiffs by themselves, their servants and or agents from evicting, and or interfering with the occupancy of land parcel *Uasin Gishu/Kipkabus Settlement Scheme/1242, 1190, 1233 and 1234*, pending the hearing and determination of the intended appeal to the Court of Appeal against the decision delivered by this Court on the 6th May, 2020. The application is based on the four (4) grounds marked (1) to (4) on its face summarized as follows; that the application was filed without unreasonable delay; the Applicants are ready to give security; that there is sufficient cause and the Applicants would suffer substantial loss if the application is not granted. The application is supported by the affidavit of **David Cheboi**, the 1st Applicant, sworn on the 19th June, 2020 in which he deponed to the following, among others;

- *That their application dated 29th May, 2018 for stay and review of the judgment of 2nd March, 2018 and leave to be enjoined in the suit was dismissed with costs vide the ruling delivered on 6th May, 2020.*
- *That the applicants being aggrieved by the said ruling lodged a notice of appeal dated the 19th June, 2020 which was outside the 14 days prescribed, that had lapsed on the 20th May, 2020.*
- *That the delay was due to their not being notified of the date of delivery of the ruling.*
- *That unless the application is granted, the Applicants will suffer substantial loss if the judgment is executed through removing them, and their development from the suit lands.*

2. The application is opposed by the Plaintiffs through the replying affidavit sworn by **Samwel Kiptanui Rono**, the 1st Plaintiff, on the 7th July 2020, who depones to the following, among others;

- *That this court is without jurisdiction to grant the application sought, as jurisdiction rests with the appellate court.*

- *That the Applicants are not parties to the suit and are being misused by the Defendants to frustrate the enforcement of the decree.*
- *That there is no order issued against the Applicants except costs of their previous application. That the current application is an abuse of the court process, is frivolous and untenable.*

3. The learned Counsel for the Defendants, Applicants and Plaintiffs filed their written submissions dated 8th September, 2020, 5th October, 2020 and 28th October, 2020 respectively.

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

(a) Whether the Applicants have established a reasonable case for issuance of temporary injunction order pending the intended appeal.

(b) Who pays the costs?

5. The Court has carefully considered the grounds on the Motion, the affidavit evidence as summarized above, the learned Counsel's submissions, the record and come to the following determinations;

(a) That the Court's judgment delivered on the 2nd March, 2018 at pages 4 to 9 set out the land parcels in dispute as Uasin Gishu/Kipkabus Settlement/1195, 1131, 1132, 1144, 1166, 1198, 1230, 1125, 1162, 1149, 1137, 1238, 1181, 1145, 1168, 1227, 1228, 1163, 1243, 1229, 1189, 1225, 1203, 1208, 1194, 1199, 1226, 1232, 1231, 1186, 1224, 1201 and 1135 owned by the 1st to 33rd Plaintiffs respectively, and illegally and forcefully occupied by the 1st to 33rd Defendants respectively. That the Court at pages 25 to 26 of the said judgment ordered that the Defendants be evicted from the Plaintiffs' parcels of land comprised in Uasin Gishu/Kipkabus Settlement Scheme/1195, 1131, 1132, 1144, 1166, 1198, 1230, 1125, 1162, 1149, 1137, 1238, 1181, 1145, 1168, 1227, 1228, 1163, 1243, 1229, 1189, 1225, 1203, 1208, 1194, 1199, 1226, 1232, 1231, 1186, 1224, 1201 and 1135 upon being given 90 (ninety) days' notice. That the parcels of land that the Applicants seeks to have the Plaintiffs enjoined from interfering with under prayer 2 of the Motion are described as Uasin Gishu/Kipkabus Settlement Scheme/1242, 1190, 1233 and 1234, which are clearly not part of the parcels litigated about between the Plaintiffs and Defendants herein, and subject matter of the judgment of 2nd March, 2018.

(b) That further to (a) above, and in view of the ruling of 6th May, 2020, declining to enjoin the Applicants as Interested Parties, and the review of the judgment of 2nd March, 2018 that has not been challenged through appeal by the Defendants, the Court finds no basis of granting the injunction order sought, as the parcels listed in the application are not in any way affected by the said judgment.

(c) That indeed, this Court has jurisdiction to hear and determine applications for injunction orders, pending appeal even in a matter where dismissal orders have been issued in appropriate cases.

(d) That as the Applicants have failed to show that they deserve the order sought, they will pay the Plaintiffs costs in the application.

6. That in view of the foregoing, the court finds the Applicants' Motion dated the 19th June, 2020 to be without merit and is dismissed with costs.

Orders accordingly.

Delivered virtually and dated at Eldoret this 25th day of November, 2020.

S. M. KIBUNJA

JUDGE

In the presence of:

Plaintiffs: Absent

Defendants: Absent.

Proposed Interested Parties/Applicants: Absent.

Counsel: Mr. Mogambi for Applicants and holding brief for Kagunza for Defendants.

Court Assistant: Christine and the Ruling is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.