



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 156 OF 2018

DECCA CHPKEMOI CHELULE (Suing as he administrator of the estate of
CHELULE CHEBUNYEI alias SAMWEL CHEBUNYE.....**PLAINTIFF**

VERSUS

KIROBON FARMERS CO. LIMITED.....1ST DEFENDANT

PHILIP LANGAT.....2ND DEFENDANT

PAUL RONO3RD DEFENDANT

RULING

(Application for injunction; principles to be applied; applicant filing suit on behalf of deceased's estate and claiming title to certain land; respondents disputing that title; 3rd respondent claiming to have purchased some land from part of the family of the deceased; contested facts which cannot be determined at the hearing of the application; balance of convenience tilting towards the maintenance of status quo; court making order that status quo be maintained until the suit is heard and determined)

1. This suit was commenced through a plaint which was filed on 24 April 2018. Together with the plaint, the plaintiff filed an application for an interlocutory injunction seeking to have the defendants/respondents restrained from the land parcel Molo South/Keringet Block 2 (Kirobon)/144 or dealing with it until this suit is heard and determined. It is that application which is the subject of this ruling.

2. The case of the applicant as discerned from her pleadings and the affidavit in support of the application is that she is the administratrix of the estate of one Chelule Chebunyei (deceased) who was a member of the 1st respondent (a land buying company) and by virtue of that membership she has claimed that he was entitled to land measuring 5.987 Hectares and was allocated the land parcel Molo South/Keringet Block 2 (Kirobon)/144 (herein after referred to as "the suit land"). It is averred that the land was however not transferred to the deceased and that the 1st respondent has failed to execute the necessary documents to facilitate transfer. The applicant complains that the 2nd and 3rd respondents have now trespassed into the suit land and have illegally erected structures including digging a pit latrine with the intention of permanently remaining on the suit land. In the suit, the applicant wants the 1st respondent to be ordered to process title and effect transfer to the applicant and for an order to permanently restrain the respondents from entering, remaining upon, occupying, using or dealing with the suit land in any manner. As I have already mentioned, in her application for an interlocutory injunction, the applicant wants the respondents restrained from the land until this case is determined.

3. The 2nd respondent has yet to enter appearance and has not filed anything in response to the application. The 1st and 3rd respondents have filed different replying affidavits to oppose the motion and the 3rd respondent has already filed a statement of defence.

4. The replying affidavit of the 1st respondent has been sworn by Samuel Kimutai Birir, the Chairman of the 1st respondent. He has not denied that the deceased was a member of their company and has stated that he got land measuring 20 acres being the land parcel Molo South/Keringet Block 1/ 17 (Kirobon). He has refuted that they allocated to him the suit land (parcel No. 144) and he has contended that the number noted in the suit land is based on a fraudulent register and map which has been contested in court through the case Nakuru ELC No. 213 of 2018. He has averred that the deceased had 4 sons, namely Joseph Chelule, John Chelule, Zakayo Chelule, and one Chelule of whom the applicant is wife to, thus a daughter in law of the late Chebunyei Chelule. He has mentioned that Chebunyei's land was subdivided amongst the 4 sons with Joseph getting about 4 acres, John 3 acres, and Chelule and the applicant 13 acres. It is said that these beneficiaries have sold the land to 3rd parties who are on the ground but title to them has not been transferred. He has stated that they have already issued title in the name of the applicant for her 13 acre portion which is the land parcel Molo South/Keringet Block 2/17 (Kirobon) but the applicant has refused to collect it as she wants to insist on the 20 acre title to the suit land which he asserts is fraudulent. He has deposed that the 2nd

respondent is merely a worker of one of the family members namely Ruth Chelule and that the 3rd respondent is on the land as a purchaser from one of the members of the deceased family.

5. On his part, the 3rd respondent has averred that he is occupying a portion measuring 50 X 100 feet of the land parcel Molo South/Keringet Block 2/400 (Kirobon) having purchased it from one Ruth Chelangat Chelule. He has stated that he is in the process of developing a permanent commercial/residential property and he wants to be allowed to continue developing it.

6. The applicant filed a supplementary affidavit where she maintained that the land in dispute is Molo South/Keringet Block 2/144 and not Molo South/Keringet Block 2/17 as alleged by the 1st respondent. She has deposed that she has been informed by a former director that Mr. Birir, in contravention of the law, proceeded to prepare another map in total disregard of the earlier approved map.

7. I invited both counsel for the applicant and the 1st and 3rd respondents to file submissions to the application which they did. I have gone through these submissions and I have considered them in arriving at my decision.

8. What is before me is an application for injunction and the principles upon which the court considers such an application are well settled. The applicant needs to demonstrate a prima facie case with a probability of success; show that she stands to suffer irreparable loss if the injunction is not granted; and where the court is in doubt, it will decide the application on a balance of convenience. Now, there is already a dispute as to whether the suit property exists as described, that is Molo South/Keringet Block 2/144 (Kirobon) or whether it is comprised of the land parcel Molo South/Keringet Block 2/17. That dispute as to which is the correct description for the land can only be resolved after hearing the parties and I do not wish to pronounce myself on it without the benefit of further evidence.

9. What is apparent however, is that the 3rd respondent is certainly on the disputed land, although he himself states that he is occupying a portion of the plot No. 400, and not the plot No. 144 which is the description given of the suit land. Again, it is difficult at this stage of the proceedings to state with finality, whether the 3rd respondent is occupying the suit land or different land, for that can only be determined with certainty after taking the evidence of the parties at a hearing.

10. Given the conflict in the evidence tabled so far, it is therefore best that this application straight away be determined on a balance of convenience. In my view, the balance of convenience tilts towards the status quo being maintained until the case is heard and determined. I have seen from the photographs annexed by the applicant, that the 3rd respondent has already built a structure which is more or less complete, save probably for some final finishing touches. I think it would be unfair to not let the 3rd respondent proceed to use this structure for the duration of the case as the applicant had the option of coming to court early before the 3rd respondent had gone far in his development.

11. Having that in mind, I therefore make the following orders :-

i. That status quo on the disputed land, whether described as Molo South/Keringet Block 2/144 or Molo South/Keringet Block 2/17 or Molo South/Keringet Block 2/400 be maintained until this suit is heard and determined.

ii. That none of the parties should sell, lease, charge or enter into dealings over any portion of the disputed land until this case is heard and determined and the use of the land be as it was prior to the filing of this case.

iii. That the 3rd respondent may proceed to finish the structure that he had started and may use it for the duration of this case, but he is barred from making any new structure until this case is heard and determined.

iv. That the titles Molo South/Keringet Block 2/144 (Kirobon); Molo South/Keringet Block 2/17 (Kirobon) and Molo South/Keringet Block 2/400 (Kirobon), be preserved as they are and there be no dealings on the titles.

v. That costs of this application will be costs in the cause.

12. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 7th day of March 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In Presence of : -

No appearance on the part of M/s Chepkirui Koech & Co for the plaintiff /applicant.

Mr. Gai present for the 1st and 3rd defendants.

No appearance for 2nd defendant.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU