



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

CIVIL SUIT NO. 96 OF 2014

MARY SHAKWEI CHEBOSWONY.....1ST PLAINTIFF

CHEMWOLO KELENDICH SOITO Alias SOITOT.....2ND PLAINTIFF

VERSUS

DANIEL CHERUTICH NGENO.....1ST DEFENDANT

JULIUS KIPTANUI KIPLAGAT.....2ND DEFENDANT

PHILIP TUITOEK.....3RD DEFENDANT

CHRISTOPHER T.KIPLAGAT.....4TH DEFENDANT

THE COUNTY OF UASIN-GISHU LAND REGISTRAR...5TH DEFENDANT

RULING

This ruling is in respect of two applications dated 11th February 2019 by the plaintiff/applicant and one dated 18th February 2019 by the 1st to 4th Defendants respectively. The plaintiff's application is for amendment of plaint which is not opposed by the 1st to 4th defendants but by the 5th defendant. The second application is for an injunction restraining the plaintiffs from ploughing and interfering with the suit parcels of land. It also seeks for an order to authorize the defendants to enter, take possession and utilize the suit parcel pending the hearing and determination of the suit.

Counsel argued the application and relied on the grounds on the face of the application and the respective affidavits. Counsel for the plaintiff filed grounds of opposition to the application for injunction and submitted that allowing the application for taking possession is tantamount to determining the suit at an interlocutory stage.

Counsel for the 5th defendant opposed the application for amendment of the plaint but did not wish to participate in the application for injunction as it did not affect his client. It was Counsel's submission that the amendment was to introduce new claims which was denied by Counsel for the plaintiff.

Analysis and determination

The application for amendment of plaint was not opposed by the 1st to 4th defendants who are the main parties to this suit. The AG who is the 5th defendant opposed the application for amendment on the ground that it is meant to introduce new claims. It should be noted that the 5th defendant has neither filed a memorandum of appearance nor a defence to enable it have audience in this case.

The court is having issues with the representation of the AG as they do not adhere to timelines set by procedure to file pleadings. They are not in any hurry to file defenses yet they want to participate in suits. This makes it very difficult for matters to proceed as scheduled.

Amendments of pleadings can be done at any time before judgment upon application by a party. The court also has powers to allow such amendments. I find that the 5th defendant's opposition to the amendment is unwarranted as they lack audience in this case. I therefore allow the application for amendment of plaint and order that the plaintiff files an amended plaint and serve the defendants within 14 days failure of which the order lapses.

On the second application for injunction, I notice from the pleadings and the admission by the defendant that the plaintiffs are the ones in occupation of the suit land. Counsel submits that the defendants have filed a counterclaim so they should be put in possession pending the

hearing and determination of the suit.

Allowing this application would be tantamount to determining this suit at an interlocutory stage. These are the issues that the court will be determining at the end of the case. Supposing we give an order for the defendants to take possession, then it will mean that the court has allowed their counterclaim as prayed.

The court had given a temporary order of injunction stopping the plaintiffs from transferring or selling the suit land until this suit is heard and determined. This order is sufficient to preserve the substratum of the case until the case is finalized. The court declines to order putting the defendants into possession of the suit land at this stage. The application is therefore dismissed with no orders as to costs.

Dated and delivered at Eldoret on this 29th day of May, 2019.

M.A. ODENY

JUDGE

RULING READ IN OPEN COURT in the presence of Mr.Kandie holding brief for Mr.Magut for the Defendant and in the absence of Mr.Cheptarus for the Plaintiff.

Mr.Mwelem – court Assistant