



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE 763 OF 2013

[FORMERLY ELDORET HCCC NO. 170 OF 2011 (OS)]

JOHN ARUSEI SINGOEI.....PLAINTIFF/APPLICANT

VERSUS

ELISHA KIPKORIR BUSIENEI.....1ST DEFENDANT/RESPONDENT

SIMON KIPKERING MUTAI.....2ND DEFENDANT/RESPONDENT

JOSEPH KIPTABUT CHEMJOR.....3RD DEFENDANT/RESPONDENT

MICHAEL K. KIBENDO (*as administrator*

***of the Estate of Esiaha Kibendo*).....4TH DEFENDANT/RESPONDENT**

MARY RUTO (*as Administrator*

***of the estate of Salil Arap Ruto*).....5TH DEFENDANT/RESPONDENT**

RULING

The application before me is dated 9th October, 2014 Wherein **John Arusei Singoei** herein after referred to as the applicant seeks orders that one Paul Gicheru to be enjoined as a defendant. Moreover, that the Land Registrar, Eldoret Lands Registry to enter a caution on land parcel Number Eldoret Municipality Block 14/68 restricting any dealing in the parcel of land pending the hearing and determination of the suit or until such time the court will deem fit status quo as at 19th April, 2011 to be maintained. The application is based on grounds that the proposed defendant has assumed ownership of the suit property and therefore, has great interest in the property.

The plaintiff states in the supporting affidavit that he bought the suit property from the original registered owner. When he took his documents for registration, he found that other persons had been registered as the owners despite the fact that he was in possession. He filed a suit for adverse possession. He realized after filing the suit that Paul Gicheru had become the registered owner. He conducted a search and discovered that Paul Gicheru was the registered owner.

The application is opposed vide grounds of opposition dated 17th February, 2017 on the basis that an order of status quo amounts to an eviction and that the application is incompetent.

Mr. Paul Gicheru filed a replying affidavit stating that the suit was filed on 6th October, 2011 after he had purchased the property. He claims to have conducted the Search on 31st March, 2011 which showed the owner of the property. He then entered into a sale agreement dated 3rd August, 2011 with the registered owners and paid entire purchase price and took possession. He was registered on 16th September, 2011. The purchase and registration were all prior to the filing of the suit. The plaintiff did not conduct a search to ascertain the ownership of the property before filing suit.

I have considered the application, supporting affidavit and the replying affidavit of Paul Gicheru and do find that it is just and fair and prudent to enjoin Paul Gicheru being the registered proprietor of the suit property. Any decision made will most likely affect the said Paul Gicheru. Order 1 Rule 10(2) of the Civil Procedure Rules, 2010 provides:

“2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be

struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added. “

I do find that there are good grounds for enjoining Paul Gicheru as the 6th defendant to enable the court to effectually and completely adjudicate upon and settle all questions involved in this suit.

The originating summons to be amended to enjoin Mr. Paul Gicheru and to state clearly the claim against him. The said 6th defendant to file a replying affidavit within 7 days of service. Costs in the cause.

In the meantime, the Land Registrar is hereby restrained from dealing with the suit property in any manner whatsoever, until the hearing and determination of the suit. Status quo on the ground to be maintained as at today. Costs in the cause. Orders accordingly.

Dated and delivered at Eldoret this 9th day of August, 2019.

A. OMBWAYO

JUDGE