



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC NO. 44 OF 2019

SAMWEL YOTA.....PLAINTIFF

VERSUS

LOSHARIPO APEREKORI.....DEFENDANT

AND

AUGUSTINE KOTORUK PSINET

(Legal Representative of the Estate of

CHEPOKROP IBRAHIM (deceased).....APPLICANT

RULING

1. By a notice of motion dated 5/7/2019 and filed on the same date, the applicant seeks the following orders against the plaintiff:

(1) ...spent

(2) That the status quo obtaining before the institution of the suit by the plaintiff be maintained pending the hearing and final determination of this application and thereafter the suit.

(3) Costs of this application be provided for.

2. The grounds on which the application is based are that the applicant has been issued with a limited grant for purposes of representing the estate of the late **Chepokrop Ibrahim** in respect of a parcel of land known as Title No. **West Pokot/Kanyarkwat 'B'/59**; that he is also a beneficial owner in occupation and use of the suit land and needs to be heard by the court; that the plaintiff has after institution of the suit against the 1st defendant started encroaching or trespassing on the suit land; that the interests of the applicant may be harmed by the outcome of the case; that the court cannot provide a complete relief to the plaintiff in the absence of the applicant and he has a recognizable state in the outcome of this come; that the actions or the alleged registration of plaintiff as proprietor of the suit premises are prejudicial to the estate of the deceased and in contravention of applicant's constitutional rights; that the rights of the applicant has been violated, infringed or denied by the actions of the plaintiff.

3. The applicant filed his submissions on 24/10/2019. I have perused the court and found no submissions filed on behalf of the respondent. I have considered the application, the response as well as those submissions.

DETERMINATION

Issues for Determination

4. The following issues arise for determination in the instant application:

(1) Whether the status quo obtaining before the institution of the suit should be maintained pending the hearing and final determination of the suit.

(2) Who should bear the costs of this application?

(1) Whether the status quo obtaining before the institution of the suit should be maintained pending the hearing and final determination

of the suit.

5. I have considered the application and the response. The first prayer for joinder was granted by this court on **8/10/2019** when Mr. Samba for the respondents indicated that he was not opposing it.
6. The basis of the application is that the applicant has been issued with a limited grant in respect of estate of the late **Chepokrop Ibrahim**. He exhibits in his affidavit a copy of the land register in respect of **West Pokot/Kanyarkwat B/59** which shows that the first registered proprietor of the suit land was the said **Chepokrop Ibrahim**.
7. It appears that the plaintiff herein was registered as proprietor on **21/9/2004**. The applicant has also registered a caution against the title claiming interests as a beneficiary.
8. The applicant's case is that his joinder is necessary for the complete adjudication of the matters arising from the suit.
9. In the supporting affidavit he avers that the plaintiff was registered as a proprietor of the suit land under circumstances unknown to the family of Chepokrop Ibrahim and this registration after the latter's death and is therefore suspect and challengeable.
10. The applicant claims to be in possession of the suit land and the plaintiff has already made a demand that he vacates the land. A copy of the demand letter dated 20/2/2019 has been exhibited in the supporting affidavit. It is also alleged that the plaintiff has commenced acts of trespass onto part of the suit land after the institution of this suit and that it is only fair that the *status quo* obtaining before the institution of the suit be maintained.
11. The plaintiff filed a replying affidavit dated **16/7/2019**. In his reply the plaintiff stated that there is no dispute that he is the registered proprietor of the suit land. He also maintains that he is in occupation of the suit land and that the applicant's agent has invaded a portion of the land and planted maize where the plaintiff had ploughed. However he does not give the dates on which his activities on the land commenced and he admits he does not reside on the land.
12. I have found that the applicant has established sufficient interest in the land. Consequently I find the application dated 5/7/2019 has merit and I grant the same as prayed in prayer **No. (2)**. The *status quo* relating to the suit land as at the time prior to the institution of the suit shall be maintained pending the hearing and determination of the suit. The costs of the application shall be in the cause.

Dated, signed and delivered at Kitale on this 7th day of November, 2019.

MWANGI NJOROGI

JUDGE

7/11/2019

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Samba for plaintiff/respondent

Mr. Ingosi for defendant/applicant

COURT

Ruling read in open court.

MWANGI NJOROGI

JUDGE

7/11/2019