

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 358 OF 2017

ZIPPORAH JEPTARUS CHEPKWONY

“aka” JEPTARUS CHEPKWONY.....PLAINTIFF

VERSUS

PHILIP CARLOS KEMBOI.....DEFENDANT

RULING

Philip Carlos Kemboi, defendant/applicant prays for an order of *status quo* on the suit land ante 17.11.2017 thus, the defendant to continue utilizing the land and that the order of 17.11.2017 be vacated. Moreover, that the proceedings herein be stayed pending the determination of the Succession Cause being Eldoret High Court P & A No. 343 of 2009 in the matter of the Estate of Kengu Arap Chepkwony.

The application is based on grounds that the Plaintiff/Respondent instituted this suit on 2nd November, 2017 vide Plaint dated 31.10.2017. The Plaintiff/Respondent subsequently filed an application dated 2.11.2017 immediately upon institution of this suit which application sought orders inter alia the injunction of the Defendant/Applicant whether acting in person or through his agents and/or servants from conducting any activities on the suit land herein. This Honourable Court granted the main order sought therein being injunctive in nature as against the Defendant/Applicant whether by himself or through his agents and/or servants on the 17th November, 2017. The orders granted have incapacitated the Defendant/Applicant from ploughing sugarcane cultivated on the suit land at this opportune moment considering the size of the sugarcane. The Plaintiff/Respondent concealed material facts relating to this cause in the institution of this suit and subsequently filing of an application resulting to the injunctive orders as against the Defendant/Applicant.

The defendant further argues that the Plaintiff/Respondent did not notify this Honourable Court that the subject matter herein is subject to succession proceedings in Eldoret High Court P&A No.343 of 2009, in the matter of the Estate of Kengu Arap Chepkwony thereby making the main suit defective and the subsequent application by the Plaintiff/Respondent irregular and untenable. The Plaintiff/Respondent seeks to render the orders by the High Court in the succession cause nugatory, irrelevant through her dubious acts and omissions. The succession cause mentioned above will determine this suit once the High Court pronounces itself. If the stay of proceedings and striking out orders are not granted the succession cause would be rendered irrelevant, nugatory and academic. The Defendant/Applicant should therefore be granted the stay of proceedings orders and the orders of 17th November 2017 be struck out to enable him to plough the sugarcane plantation pending the determination of the succession cause.

In the replying affidavit of Philip Carlos Kemboi, it is stated that the suit land has sugarcane planted by the applicant that require care until maturity. Moreover, that the Succession Cause is still pending in court. Zipporah Jeptarus Chepkwony in response states that she is the beneficial owner of the suit land which was subject to Succession Cause No. 343 of 2009 in the Estate of Kengu Arap Chepkwony. A certificate of Confirmation of grant was issued on 14.2.2011 to the plaintiff and the co-wife. The defendant/applicant was given a curved-out parcel No. Nandi/Kipkaren/151. She denies that the defendant/applicant has been in possession of the land.

I have considered the application and relevant affidavits and submissions of counsels and do find that the issue before me is the status quo ante 17.11.2017 and especially the affidavit sworn by Philip Carlos

Kemboi vis-a-vis the affidavit of Zipporah Jeptarus Chepkwony and do find that Philip Carlos Kemboi is clear in his statement that he has planted sugarcane which he needs to prepare until harvesting. The latter is evasive and only states that the defendant entered the suit land recently and started trespassing. It is my considered view that the fact that the plaintiff is evasive on the status quo implies that the defendant is in occupation and has planted sugarcane. The plaintiff has not said anything about the sugarcane. It was admitted by counsel for the plaintiff that the defendant comes in to plough and plant seasonally. I do further find that the Succession Cause has not been concluded and therefore it is prudent to maintain the *status quo* ante 17.11.2017.

The upshot of the above is that the orders issued on 17.11.2017 are hereby vacated. There be stay of proceedings pending determination of Succession Cause No. Eldoret High Court P & A No. 343 of 2009 in the matter of the Estate of Kengu Arap Chepkwony. Status quo ante 17.11.2017 to be maintained thus the defendant to continue utilizing the land pending determination of Succession Cause.

Costs in the cause. Orders accordingly.

Dated, signed and delivered this 26th day of January, 2018.

ANTONY OMBWAYO

JUDGE