



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E&L NO. 50 OF 2017

EMMANUEL RUTO KIPROP.....PLAINTIFF/RESPONDENT

VERSUS

HENRY KIPCHUMBA TARUS.....1ST DEFENDANT/APPLICANT

SOLOMON KIPROTICH TARUS.....2ND DEFENDANT/APPLICANT

RAEL TERIKI TARUS.....3RD DEFENDANT/APPLICANT

EMMANUEL KPKOGEI TARUS.....4TH DEFENDANT/APPLICANT

ISMAEL KIBET TARUS.....5TH DEFENDANT/APPLICANT

RULING

This ruling is in respect of an application brought by way of notice of motion dated 31st March 2017 by the defendant/ applicants for orders that:

1. THAT the Honorable court be pleased to set aside, review and or vary its orders of injunction issued on 9th February 2017 over application dated 9th February 2017 and applicants be given an opportunity to be heard,
2. The applicants be granted leave to file & serve replying affidavit and pleadings as necessary within 14 days or such time as court may order.
3. Costs of this application be borne by the plaintiff/respondents.

This application was brought under certificate of urgency and the same was certified as urgent. The court ordered that the matter be served within 7 days for inter parte hearing. The same was served but when it came up for hearing, Mr. Arusei for the plaintiff/respondents was bereaved and had taken time off. The parties later agreed to canvass the application by way of written submissions.

Defendant/Applicants' submissions

Counsel for the defendant applicants submitted that it was their contention that the defendant/applicants have been denied an opportunity to participate in the matter and to defend themselves. Further that the applicants have been condemned unheard and stand to suffer loss and damage. He submitted that the applicants contend that they were never served with the pleadings and that the respondent has mischievously and unprocedurally obtained orders of injunction. The said order obtained affects land that is owned and occupied by the applicants.

It was counsel's submission that the 1st, 2nd, 4th and 5th defendant/applicants are brothers and the 3rd defendant is their mother. The orders obtained by the respondent were obtained on the basis of alleged service of the pleadings upon the defendant applicants and is deponed in the affidavit of service of PELLA AMUGUNE ISIGAGA. The applicants have strongly contested the alleged service through his supporting affidavit at paragraph 8,9,10,12,13 and 14 of the supporting affidavit. Counsel stated that the applicant has sought at paragraph 15 to cross examine the deponent of the said affidavit of service so as to prove the falsehoods. Counsel urged the court to set aside or review the orders made by this court.

Counsel for the plaintiff respondent also filed lengthy written submission to oppose the application. He stated that the applicants were served and they have not sought for the cross -examination of the process server. I find that this position is not true as the applicants' application is based on the lack of service. I also note from the pleadings that the parties are related being brothers and a mother to the plaintiff.

I will not belabor much in this application as service is very important in litigation and a mandatory requirement. I have noticed that there are process servers who are not taking their work and duty seriously. This is an issue that should be addressed by the relevant authorities. Some go as far as either forging signatures or thumb printing and swearing false affidavits of service. I have had occasions where process servers are cross examined and they confirm that they have never met the persons they alleged to have served. As much as each case should be determined on its own merit I find it disheartening that we have allowed 'crooks' to interfere with the administration of justice. This creates double work and possible miscarriage of justice.

Having said that, I hereby vary the orders dated 9th February 2017 and substitute it with an order of status quo obtaining at the filing of the suit. I further order that the parties to comply with order 11 within 30 days and fix the main suit for hearing. This matter being a family matter, the parties should try a negotiated settlement if they so wish.

Dated and delivered at Eldoret on this 18th day of January, 2018.

M.A ODENY

JUDGE

Ruling read in open court in the presence of:

Mr. Onyinkwa holding brief for Kipsei for defendant/Applicant

No appearance of Plaintiff/Respondent.

Mr. Koech – court Assistant.