



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

ELC. NO. 154 OF 2017

JULIUS KIPLAGAT BARNGETUNY.....PLAINTIFF

VERSUS

JOEL KIPTOO SAMBU.....DEFENDANT

RULING

This is the ruling in respect of an application dated 4th April 2017 by way of notice of motion by the plaintiff/applicant seeking for orders :

a. Spent.

b. THAT pending the hearing of this application inter - Partes, or until further orders of this Court, there be an order of temporary injunction restraining the Defendant whether by himself his servants, agents, assignees or nominees or whomsoever acting through him from moving into, claiming, dispossessing the Applicant, alienating, sub dividing, fencing off, charging, transferring, ploughing, planting, putting up any structure thereof or in any manner of whatsoever nature dealing with any part or parts or portions of Parcel Nandi/Chepterwoi/217.

c. THAT in the alternative but without prejudice to prayer (b) above the Defendant is restrained by an order of this Honourable Court from moving in and claiming to develop and or improve by way of farming activities and or putting up any structure of whatever nature on any part or portion of Nandi/Chepterwoi/217 pending the hearing and determination of this application inter partes or until the determination of the Suit.

d. THAT any other or further orders be made by this Honourable Court preserving the whole of Nandi/Chepterwai/217 against any developments by the Defendant whether by himself his servants, agents, assignees or nominees or whomsoever acting through him pending the hearing and determination of this Application.

e. THAT any other or further order be made as the Court may deem fit and suit as the application and the Suit have overwhelming chances of success.

f. THAT cost of the application be in the cause.

Counsel for the applicant argued that the plaintiff has been in occupation of the suit land since 1974 after entering into an agreement on 26/9/74 with one Sambu who is the defendant's late father. Counsel further relied on the supporting affidavit which did not have any annexures to prove the claim that the applicant had entered into an agreement as alleged.

The application was opposed by the respondent's Counsel who also relied on the replying affidavit. The respondent claimed in the replying affidavit that the plaintiff did not purchase the suit land from his father. In the same breath he averred that the plaintiff has been ploughing the suit land.

Analysis and determination

This is an application for a temporary injunction to restrain the defendant from interfering with the suit land. The principles of grant of injunctions are well settled as per the Giella Casman Brown case.

The issue for determination is whether the plaintiff has established a prima facie case with a probability of success against the defendant. The material before me is scanty from both parties. It is the plaintiff's word against the defendant's without proper documentation.

It is incumbent upon the applicant to demonstrate that he has a prima facie case against the defendant with a probability of success. In the current case I am not persuaded that the applicant has established a prima facie case against the defendant.

I will not go into the other limbs that the applicant must meet in order to be granted an order of injunction as the balance on convenience does not tilt in favour of the plaintiff.

The upshot is that the application is dismissed and each party to bear its own costs.

I will however use my discretion to order that the status quo be maintained pending the hearing and determination of this suit.

Dated and delivered at Eldoret on this 8th day of February, 2018.

M.A ODENY

JUDGE

Ruling read in open court in the presence of Mr. choge for Plaintiff/Applicant and in the absence of C.D Nyamweya for Defendant/Respondent.

Mr. Koech – Court Assistant.