

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 404 OF 2017

SAMUEL KIPTANUI KIPKOR.....APPLICANT/PLAINTIFF

VERSUS

BARINGO COUNTY GOVERNMENT.....RESPONDENT/DEFENDANT

RULING

Samuel Kiptanui Kipkor (*hereinafter referred to as the applicant*) has come to court against **Baringo County Government** (*hereinafter referred to as the respondent*) praying for a temporary injunction to restrain the defendant by itself, its agents, servants, employees or others whosoever from entering into, taking possession of, acquiring, allocating, leasing out, charging, demolishing or dealing in any other manner on Plot No. 29 at Kiptuno Trading Centre pending the hearing and determination of this suit.

The application is based on grounds that the respondent has threatened to demolish the building on the applicant's property plot No. 29 situated at Kiptuno Trading Centre, Eldama Ravine Sub-county, Baringo County. That the applicant's case has merit with high chances of success. Last but not least, that the applicant stands to suffer irreparable loss and damage if the respondent is not restrained.

The application is supported by the affidavit of Samuel Kiptanui Kipkor who states that he was allocated Plot No. 29 in the County Council of Baringo as it then was in 1995. He paid Kshs.300 as allocation fee and Kshs.300 for Plot rent for 1995 and 1996. He took possession and occupation of the said Plot to-date. In 2017 June, he submitted a building plan that was accepted as he was given a go ahead to construct. However, on 18.7.2017, he was served with a notice by the Sub-County Administrator for Eldama Ravine that the plot stands on public utility. He has built a permanent structure on the plot. Now the County has threatened to demolish the structure and has already removed the chain link fence surrounding the land. He has been in possession for 22 years.

The respondent filed grounds of opposition stating that the applicant/plaintiff has no locus standi to file the suit herein in that he does not have any document of title/ownership over the alleged suit land hence he has not established the requisite nexus between himself and the alleged suit land and that the applicant/plaintiff is a trespasser *ab initio* hence lacks *locus standi* to institute this claim. According to the respondent, the applicant/plaintiff's suit herein does not meet the threshold required for the granting of the equitable remedies as provided for the case of ***Giella Vs Cassman Brown & Co. Ltd (1973) 1 EA 358 (C.A.K) AND*** that the applicant/plaintiff has not come to this Honourable Court with clean hands hence the equitable remedies he is seeking for herein cannot be availed to him because, ***"he who seeks for equity, must do equity"***. That as a result of the contents of paragraphs 1, 2, 3 and 4 above, the applicant/plaintiff's application is thus misconceived, bad in law, frivolous and vexatious and amounts to an abuse of the due process of the court. That no prejudice whatsoever shall be visited upon the applicant/plaintiff because he cannot lose what he never owned. That as a result of the above, the applicant/plaintiff is not entitled to the prayers sought in the application dated 16th December, 2017 and the same plus the main suit should be dismissed with costs.

Anthony Kibet Tanui, the Eldama Ravine Sub-County Administrator, states that though the Applicant submitted his application for a plot as alleged and though he was allocated the said plot, he did not comply with the condition and that the plot does not exist and that the allocation was a provisional promise. The gist of the respondent's case is that the applicant has no evidence of ownership and that he

was never allocated the plot.

I have considered the application and supporting affidavit, grounds of opposition and the replying affidavit and I do find that on the 24th July, 1995, the applicant's application for a plot was allowed by the County Council of Baringo and he was to be shown the said plot. It appears he was shown the ground he is developing which is the suit plot. The plot is described as Plot No. 29 at Kiptuno. He paid demarcation fees, plot rent for 1996 to 2005. The subject plot is developed.

The respondent appears not sure whether the plot exists. He appears to be blowing cold and hot. He states in the affidavit at paragraph 4 that the application for the plot by the applicant was successful however, he did not comply with the conditions in the allocation letter. He does not state which plot the applicant was allocated. He states that plot No. 29 does not exist but he was receiving rent for Plot No. 29. He admits that the allocation was provisional promise for allocation. The respondent proceeds to contradict himself by stating that Plot No. 28, 29, 30 and 31 were collapsed into Plot No. 32 to create a public utility. This confirms that Plot No. 29 existed.

From the foregoing, I do find that the applicant has established that he was allocated a plot and has been paying rent for Plot No. 29, which the respondent admits that it exists but has been converted into a public utility plot. The facts above demonstrate that the applicant has established a prima facie case with a probability of success. Moreover, the fact that the applicant has heavily invested on the parcel of land is not disputed. I do find that the applicant has demonstrated that he is likely to suffer irreparable loss if the structures on the land are demolished. Though am not in doubt, but even if I was in doubt, the balance of convenience would tilt towards granting injunction as the applicant is likely to be inconvenienced if the structures on the parcel of land are demolished.

Ultimately, I do grant injunction in terms of a temporary injunction to restrain the defendant by itself, its agents, servants, employees or others whosoever from entering into, taking possession of, acquiring, allocating, leasing out, charging, demolishing or dealing in any other manner on Plot No. 29 at Kiptuno Trading Centre pending the hearing and determination of this suit.

Dated and delivered at Eldoret this 2nd day of March, 2018.

A. OMBWAYO

JUDGE