



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 124 OF 2012 (O.S)

ALICE CHEMANDAN SIYOI.....PLAINTIFF

VERSUS

JOEL KIPTOO NG'ENO.....1ST DEFENDANT

RODAH CHEBET NG'ENO.....2ND DEFENDANT

FRANCIS KIPRONO NG'ENO.....3RD DEFENDANT

BRIAN KIPTANUI4TH DEFENDANT

AND

JOHN THUO GAKURU.....INTERESTED PARTY

RULING

1. The suit herein is scheduled for hearing on 30/5/2018. There is an application dated 31/1/2018. It seeks that the plaintiff/respondent be restrained from undertaking any kind of activities on those plots known as **Kitale Municipality Block 15/Koitogos/4080 and 4139**, pending the hearing and determination of the suit herein.

2. On 14/2/2018 a Preliminary Objection was filed in this matter stating that the application is an affront to the provisions of **Section 28** and read with **Section 25 of the Land Registration Act, No. 3 of 2015**; that the application goes against the provisions of **Section 52** of the **Indian Transfer of Property Act** as read with **Section 107** of the **Land Registration Act No. 3 of 2015**; that the application contravenes the provisions of **Section 1A and 1B** of the **Civil Procedure Act Cap 21** of the **Laws of Kenya** as read with **Order 40 Rule 1 of the Civil Procedure Rules**, and that the said application is in violation of **Section 107** as read with **Section 3(4) of the Evidence Act Cap 80** of the **Laws of Kenya**. It is this four-limbed preliminary objection that is the subject of this Ruling.

3. However, as the suit herein has substantially proceeded in the past and is due to proceed to hearing soon, this court prefers to have a bird's eye view of the entire arena of litigation in this matter in order not to prejudice the trial of the suit or any final judgment in the matter.

4. The interested party pleads prior ignorance of this piece of litigation over the suit property before he purchased it.

5. I have perused the submissions of the parties. In my view the limbs Nos.1, 2 and 4 of the Preliminary

Objection, though premised on legal issues, need not be determined now as decision on those issues, it being clear that it would require evidence from the parties, would necessarily prejudice the trial of the main suit which is drawing to a close. For caution, this court is not able and will not address the issues here in this Ruling, including the doctrine of *lis pendens*.

6. Limb No. 3 relates to the essence of the overriding objective of the Civil Procedure Act and Rules within the context of an application for an injunction. The plaintiff cites the case of *Rockland Kenya Ltd -vs-Elliot White Miller 1994 eKLR* in which *Gicheru J* stated as follows:-

“The object of an interlocutory injunction is to protect the plaintiff against injury by violation of his legal right for which he could not be adequately compensated in damages recoverable in action if the matters in dispute were resolved in his favour”.

7. However, I note that the plaintiff cannot also address this issue without alluding to the doctrine of *lis pendens*, which this court cannot pronounce itself on at this interlocutory to prevent prejudice to the trial of the main suit scheduled for 30th May 2018.

8. I agree with the interested party when he states that some of the issues raised in the Preliminary Objection cannot be determined by way of a Preliminary Objection. I agree that limbs Nos. 1, 2 and 4 require evidence to be tendered for them to be appropriately determined by this court.

9. In a situation like this, and I state this with the impending end of the hearing in mind, the parties should be heard on the main suit on its merits rather than determine such objections as raised by the plaintiff and this is the course which appeals to this court for now.

10. I therefore think that the Preliminary Objection is not a proper Preliminary Objection. The same is hereby disallowed. Parties will bear own costs.

Dated, signed and delivered at Kitale on this 25th day of April, 2018.

MWANGI NJOROGE

JUDGE

25/4/2018

Coram:

Before: Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Analo for the 3rd party

Ms. Sitati holding brief for Mr. Wanyama for applicant

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

25/4/2018