



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 260 OF 2017

LUCY MUTHONI MBURU.....PLAINTIFF

VERSUS

JAMES MBURU THAIRU.....DEFENDANT

RULING

Lucy Muthoni Mburu, (*hereinafter referred to as the plaintiff*) has come to court against **James Mburu Thairu** praying that pending the hearing and determination of the case, the court be pleased to issue a temporary injunctive order restraining the defendant, his servants, agents from trespassing, entering and/or in any manner interfering with the plaintiff's occupation of the land known as **Eldoret Municipality/Block 14/1455**.

The application is based on grounds namely: -

1. That the plaintiff/applicant is the legal and registered owner of the parcel of land known as Eldoret Municipality/Block 14/1445.
2. That the defendant/respondent threaten to trespass into the plaintiff's property without the plaintiff's permission/consent and/or any legal justification.
3. The defendant is threatening the plaintiff's life and right to property enshrined in the Constitution under Article 40.
4. The plaintiff/applicant and defendant/respondent divorced on grounds of cruelty on the part of the defendant/respondent.
5. The plaintiff/applicant secured the suit property from the defendant pursuant to a suit filed in court vide Eldoret High Court Case No. 24 of 2005 (OS).
6. That unless the orders sought are granted, the defendant/respondent is likely to harm the plaintiff/applicant and continue infringing on the plaintiff's rights.
7. That the defendant/respondent will not suffer any prejudice if the orders sought are granted since he has his home in Timboroa where he has resided ever since the suit land was transferred and registered in the plaintiff's name.
8. That the defendant/respondent has his home in Timboroa where he resides and has other properties.
9. That this Honourable court has power to grant the orders sought in the best interest of justice.

The defendant on his part states:

1. That he is in possession of land reference Eldoret Municipality Block 14/1455.
2. That he has never moved out of land reference Eldoret Municipality Block 14/1455.
3. That an injunction will not do as the plaintiff needs an eviction order to remove him from the suit land.
4. That the plaintiff clearly admits his being on the suit land by seeking an eviction against him.
5. That the application dated 22.6.2017 is incompetent.

6. That the plaintiff is not the registered owner of the suit parcel of land as not title deeds and or certificates of lease have been exhibited.
7. That he lives on the suit property with the plaintiff and their sons and daughters.
8. That he has not issued any threats to the plaintiff and assertions to the contrary are untrue.
9. That the consent dated 25.11.2005 has never been adopted by the court as per law envisaged.
10. That the court ought to hear him before it decides on whether or not he ought to be evicted from the suit parcel of land.
11. That he stands to suffer irreparable harm as he has nowhere else to move to.
12. That he does not have a home in Timboroa nor do he reside at Timboroa.
13. That he never gave instructions to Chuma Mburu to enter into the consent dated 16.11.2004.
14. That the consent dated 16.11.2004 is fraudulent.
15. That he never conceded to the plaintiff's claim nor have he agreed to vacate the suit land.
16. That the plaintiff has not met the threshold for the orders she seeks.
17. That the balance of convenience tilts in his favour as he is in occupation of the land.
18. That the consent order was not executed on his instructions.
19. That the consent order dated 16.11.2004 is stale.
20. That he has never relinquished his claim on the suit land.
21. That the County Government, Uasin Gishu does not keep records of the registered owners of land.
22. That he has never been served with any petition for divorce despite living on the same parcel of land with the plaintiff.
23. That the application is an abuse of the court process.
24. That granting the application dated 22.6.2017 is tantamount to determining the entire suit.
25. That he has never been cruel to the plaintiff.
26. That to the contrary, it is the plaintiff who has assaulted him in the past and even brought police into their home and in the process, he was shot and seriously wounded.

I have considered the application and do find that it is a fact that the plaintiff and defendant were once married, however, the said marriage, which had been solemnized on 6.6.1988 was ordered to be dissolved on 13.1.2012 and a decree nisi issued on 19th January, 2012. The absolute decree was issued on 28th August, 2012.

On 28.11.2005, it was ordered by consent that the defendant transfers to the plaintiff Eldoret/Municipality/Block 14/1455 as per share certificate number WL/UG 11 dated 12.9.1996 issued by Wareng Lands Limited to the plaintiff in consideration of the plaintiff settling the debt due for the defendant to Imenti Agencies. The defendant was to facilitate the transfer.

The consent was entered in Eldoret Hccc No. 24 of 2005 (OS) and the suit was marked as compromised. The plaintiff has not annexed the title deed as proof of ownership. The defendant is in possession of the parcel of land. It is not clear whether the plaintiff resides on the parcel of land.

Though the plaintiff has established a prima facie case with probability of success as she is the person in whose name the defendant should transfer the land to, an order of eviction cannot be issued at this stage. This matter should go for full hearing before an order of eviction can be made. The upshot of the above is that I do order that status quo to be maintained.

Dated, signed and delivered at Eldoret this 31st day of July, 2018.

A. OMBWAYO

JUDGE