



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 17 OF 2014**

**RICHARD TOROITICH.....PLAINTIFF**

**VERSUS**

**1. MIKE L. LELMET**

**2. ELISHEBA C. LELMET**

**3. PAULINE J. LELMET**

**4. ESTHER J. LELMET (suing as administrators of the Estate of**

**WILLIAM CHERUIYOT LELMET.....DEFENDANTS**

**RULING**

1. By an application dated 28<sup>th</sup> June, 2018 and filed in court on 4/7/2018 the plaintiff/applicant sought the following orders:-

**1. That the plaintiff be granted leave to further amend the amended plaint filed herein so as to join SIRI LELMET as the 5<sup>th</sup> defendant in this suit.**

**2. That the said SIRI LELMET and the defendants herein, jointly and severally by themselves, their workmen, servants and or agents or otherwise howsoever, be restrained by an interlocutory injunction from further entering upon the portion of land occupied by the plaintiff comprising of five acres situated within the parcel of land known as LR No. 6614/4 KIPKINGWO FARM situated in CHERANGANY DIVISION of TRANS-NZOIA COUNTY, or any portion thereof and from, fencing off the same or portions thereof, cutting trees, clearing and ground, digging the ground, ploughing the same, planting any crops thereon, and or from interfering with the plaintiff's occupation and use of the same in any manner whatsoever, initially pending the hearing and determination of this application and thereafter, pending the hearing and determination of the suit filed herein.**

**3. This honourable court be pleased to issue further orders and or directions on the hearing of this matter and the main suit.**

**4. That the costs of this application be provided for.**

2. The application is brought under provisions of *Order 1 Rule 3, 6, 7 and 10* and *Order 40 Rules 2, 4 and 10 of the Civil Procedure Rules* and *Sections 1A and 1B of the Civil Procedure Act*. The grounds on which the said application is made are as follows:-

**i. MR. SIRI LELMET, the party intended to be joined as a defendant herein is a beneficiary of the Estate of WILLIAM CHERUIYOT LELMET and a relative to the defendants has commenced fencing off a portion of the land occupied and used by the plaintiff which comprises the plaintiff's drive way and entry into his home, barring the plaintiff from use of the same. As a result, the plaintiff has had to cut down some of his maize prematurely so as to create an alternative route to his home through his shamba. The actions complained of are unlawful and highly provocative and the plaintiff is reasonably apprehensive that unless the said SIRI LELMET is restrained by an order of interlocutory injunction, he will, with complicity from the defendants herein, unlawfully evict the plaintiff from the suit premises before the suit is heard and determined.**

**ii. The plaintiff/applicant therefore seeks leave to further amend the amended plaint filed herein so as to join the said SIRI LELMET as a defendant in this matter so as to give effect to any orders that this honourable court may issue against him as prayed herein.**

iii. This matter is part heard and is fixed for further hearing of the main suit on 18<sup>th</sup> July, 2018 therefore this application ought to be heard on a priority basis and be disposed of before the hearing of the main suit and to avoid delay in the determination of the main suit.

iv. It is just and expedient for the intended defendant to be joined in this matter because he has interfered with the suit property with the knowledge and connivance of the defendants herein who have encouraged the acts complained of and a separate suit would raise the same issues as are being dealt with in this suit.

v. It is also fair and just to grant the orders sought to restrain the defendants from wasting the suit property and or altering the status quo by unlawfully evicting the plaintiff. If the intended defendant persist in the acts complained of, the suit herein will be overtaken by events and or be rendered a mere academic exercise.

3. The application is supported by the affidavit of the plaintiff/applicant dated 28/6/2018 and filed on 4/7/2018.

4. I have considered the application at hand. It has been brought by the plaintiff who is apprehensive of the acts of a person who is not a party to the suit which actions she considers detrimental to her rights.

5. The plaintiff's aim is to bring that party within the ambit of the enforcement of any orders that this court may issue in relation to the suit property. This is a suit in which the plaintiff has not closed her case. It is observed that this court has power under **Order 1 rule 10 (2)** at any stage of the proceedings without the application of either party on such terms as may appear to the court to be just, to order that the name of the any party whose presence before the court may be necessary in order for the court to effectually any completely adjudicate upon and settle all questions involved in the suit, be added.

6. I also note that the principle has been that amendment pleadings should be allowed freely at any time before judgment. **Order 8 rule 5 (1)** comes in handy to supplement **Order 1 rule 10 (2)** in that it permits the court, for the purpose of determining the real question in controversy between the parties, of its own motion or on the application of any party to order any document to be amended in such a manner as it directs and on such terms as to costs or otherwise as are just. It is with those provision in mind I approach the application before me dated 28/6/2018.

7. I find that little or no prejudice would be occasion to the defendant if the orders sought herein were granted. I therefore grant the application dated **28/6/2018** as prayed in terms of **prayer (1)** and **(2)** thereof. The amended plaint shall be filed and served within 7 days of this order. The costs of the application shall be in the cause.

**Dated, signed and delivered at Kitale on this 31<sup>st</sup> day of July, 2018.**

**MWANGI NJOROGE**

**JUDGE**

**31/7/2017**

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Sifuna for the defendants

N/A for the plaintiff

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**31/7/2018**