



Biwott v Kibet & 4 others (Environment & Land Case 43 of 2023) [2024] KEELC 178 (KLR) (25 January 2024) (Ruling)

Neutral citation: [2024] KEELC 178 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 43 OF 2023
A OMBWAYO, J
JANUARY 25, 2024**

BETWEEN

LOJOMON K BIWOTT PLAINTIFF

AND

JAMES KIPRONO KIBET 1ST DEFENDANT

VINCENT KIPNGETICH RONO 2ND DEFENDANT

ANTHONY KIPROP KIPRONO 3RD DEFENDANT

MARY KABON RONO 4TH DEFENDANT

NOAH LANG'AT A.K.A NOAH KIPKORIR 5TH DEFENDANT

RULING

1. Lojomon K. Biwott (herein after referred to as the plaintiff) has come to this court by way of plaint claiming that the 1st defendant Willy Kipkorir Kibet, being the natural heirs to the Estate of their deceased father sold portions of land parcel NO. KAKAMOR/KIPROTA/200 to the Plaintiff, amongst many other buyers with the understanding that upon the distribution of their father's Estate, each of them would transfer to the Plaintiff the respective portions they had sold to him and the purchase price was paid in full for each of the portions. .
2. The Plaintiff therefore purchased Nine (9) Acres and Two (2) plots from the 1st Defendant and five (5) Acres and Four (4) plots from the deceased Willy Kipkorir Kibet, all totaling to fourteen (14) Acres and six (6) plots, and which land was to be excised from the respective shares of the 1st Defendant and the deceased Willy Kipkorir Kibet's in land parcel Number KAKAMOR/KIPROTA/200. The Plaintiff has duly taken possession, occupation and use of the parcels of land he purchased from the I Defendant and the deceased Willy Kipkorir Kibet and has fenced the same.



3. The Plaintiff is aware that there is Succession Cause No. 62 of 2020 at the Principal Magistrate's Court at Eldama Ravine and the Plaintiff is also aware that the 1st Defendant and the deceased Willy Kipkorir Kibet did not include the interests of the Plaintiff in the said Succession Cause and they have continued to deny the rights of the Plaintiff over the portions of the land that he had purchased.
4. The 2nd, 3rd and 4th Defendants have continuously interfered with the Plaintiffs ownership, possession, use and occupation of the Nine (9) Acres and the Two (2) plots the Plaintiff purchased from the 1st Defendant without any reasonable cause or justification. The 5th Defendant has also continuously interfered with the Plaintiff's ownership, possession, use and occupation of the Five (5) Acres and three (3) plots purchased from his late father , Willy Kipkorir Kibet without any reasonable cause or justification.
5. According to the plaintiff the 1st defendant has failed and refused to recognize the plaintiffs rights on the land and has threatened to evict the plaintiff. Accompanying the plaint is a Notice of Motion wherein the plaintiff prays for an order of injunction restraining the defendant from subdividing, transferring, selling or in any way disposing of all that parcel of land known as Kakamor/Kiprota.200 and from interfering with the plaintiffs quiet enjoyment use and possession of the portions of land marked :-
A-5 acres
B- 5 acres
C- 5 acres
Plot 1- 50ft X 100 Ft
Plot 2- 50Ft X 100 Ft
Plot 3- 50Ft X 100 Ft
Plot 4- 50Ft X 100 Ft
Plot 5- 50Ft X 100 Ft
Plot 6- 50Ft X 100 Ft
6. In the sketch map attached to the affidavit support of the application.
7. The applicant prays for costs of the application. The plaintiff claims to have taken possession of the 14 acres and 6 plots. The defendant have invaded the parcels of land and plots and now intends to evict the plaintiff.
8. In the replying affidavit Vincent Kipngetich Ronah on behalf of the respondents states that he has authority to swear affidavit on behalf of respondents. He states that the grant in respect of the estate of the deceased Kibet Arap Chemirmir has not been confirmed and that the beneficiaries of the estate have not been established. The respondent state that the 1st defendant and the late Willy Kipkorir Kibet did not have the legal capacity to sell part of the land registered in their deceased father's name. Moreover, that the 2nd, 3rd and 4th and 5th defendants were not privy to the sale agreements.
9. I have considered the rival submissions and do find that the suit cannot be declared as time barred because the grant of letters of administration intestate in the estate of the late Kibet Arap Chemirmir has not been confirmed. The rival submission elicit three issues for determination: -
 1. Whether the plaintiff has established a prima facie case with a likelihood of success
 2. Whether the plaintiff will suffer irreparable loss if injunction is not granted.



3. Where the balance of convenience tilts.
10. On the 1st issue, I do find that the plaintiff has proved that he is in possession of the land, having been given possession by the 1st defendant and the latter Willu Kipkorir Kibet who are beneficiaries of the Estate of Kibet Arap Chimirmir hence the plaint does raise triable issues and that there is a likelihood of success. On the issue of to whether the plaintiff is likely to suffer irreparable loss, I do find that the allegations that the plots are fully developed is not controverted. The plaintiffs has attached photographs of the development which shows a chain-link fence a permanent house, a store and therefore it is evident that the plaintiff is likely to suffer irreparable loss of injunction is not granted.
11. The balance of convenience tilts towards granting an injunction because the plaintiff has been in possession of the land and has developed the same since he purchased the same until today and will suffer greater inconvenience if injunction is not granted and later he succeeds in the suit compared to the defendants who are not in possession. If the injunction is granted and they succeed in the suit, they will suffer little inconvenience as they are not in possession. Moreover, they will be compensated with costs. The upshot of the above is that the application is allowed.
12. I do grant an order of injunction restraining the defendants from subdividing, transferring, selling or in any way disposing of all that parcel of land known as Kakamor/Kiprota.200 and from interfering with the plaintiffs quiet enjoyment use and possession of the portions of land marked :-
- A-5 acres
 - B- 5 acres
 - C- 5 acres
 - Plot 1- 50ft X 100 Ft
 - Plot 2- 50Ft X 100 Ft
 - Plot 3- 50Ft X 100 Ft
 - Plot 4- 50Ft X 100 Ft
 - Plot 5- 50Ft X 100 Ft
 - Plot 6- 50Ft X 100 Ft.
13. In the sketch map attached to the affidavit support of the application until hearing and determination of the suit.Costs of the application be in the suit.

RULING DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 25TH DAY OF JANUARY 2024.

A. O. OMBWAYO

JUDGE

