REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 186 OF 2015

CLARA JEROTICH KANGOGO

CATHERINE JEPKEMOI (Suing as the Administrators of the Estate of

RICHARD CHELIMO KANGOGO).....PLAINTIFFS

VERSUS

BOAZ KAINO.....DEFENDANT

RULING

The plaintiffs herein have come to court vide application dated 27.5.2016 seeking for orders that the defendant to remit rent due from the rental premises on the suit land known as Elgeyo Marakwet/Iten Township/196 due to the applicant for subsistence and/or and for just and fairness of the dispute herein pending the hearing and determination of the suit and that the defendant be ordered to deposit in court or into both advocates joint interest earning account all the rent collected from the premises on the suit land known as Elgeyo Marakwet/Iten Township/96 since the beginning of his collections onward until and pending the inter-parties hearing and determination of this application and eventually the suit. The applicant prays that costs be provided for by the plaintiff.

The application is based on grounds that the plaintiffs/applicants are the legal and/or the equitable owners and/or beneficiaries of parcel of land known as Elgeyo Marakwet/Iten Township/196 and consequently the landlord therein and therefore likely to suffer loss, prejudice and damages if the defendant who is invading the premises makes away with collecting the rent and rent so far collected from aforestated premises.

The plaintiffs/applicants will suffer substantial loss if the orders sought are not granted and the general rule of administration of the deceased's estate is being breached by the defendant/respondent who has ignored, refused and declined to remit rent due to the plaintiffs.

The plaintiffs have a prima facie case with the high probability chance of success and that the defendant will do away with the applicant's rent arrears hence rendering the suit nugatory and prejudice the eventual outcome of the case.

The application has been brought in good faith in the interest of justice and has been lodged expeditiously.

It is glaringly clear that the defendant/respondent is merely delaying the applicant's rightful fruits of the equity and undermining the rule of natural justice. It is fair, just and expedient that this application be allowed.

In the supporting affidavit, the Plaintiff states that she is the lawful owner/beneficiary of the premises situated on land parcel Known as Elgeyo Marakwet/Iten Township/196. The defendant has been collecting rent from the premises on the suit land but has not ben paying/remitting to her rent collected from the premises yet he has been unlawfully, unjustly and selfishly collecting rent from the suit parcel of land.

She is incurring expenses in maintaining the premises and paying loan to the bank, straining financially yet her husband left behind a number of properties including the rental premises on the suit property herein.

She believes that if the respondent is allowed to continue unjustly collecting rent for his selfish, unjust and unfair gain from the suit premises as he is doing then he will stand to suffer prejudice, injustice, loss and irreparable damages. She knows that the respondent has already began making arrangements to alienate the suit land to third parties in order to defeat the cause herein and she is apprehensive that the respondent will do away without paying her due rent so far collected and the rent he is in in continual collection.

She believes that it is only fair and just that the respondent be ordered to pay rent collected since her husband died and the arrears to continue paying rent to her and/or deposit the same in their advocate's joint interest earning account in the event of the same being defeated by virtue of his intention to hid behind status quo.

The defendant on his part states that at no time was the applicant the beneficial owner of the said property No. ELGEYO MARAKWET/ITEN TOWNSHIP/196 and that he has been collecting rent from the said premises in his capacity as the owner thereof having purchased the same from the late RICHARD KANGOGO CHELIMO and having occupied the same for over 12 years, as a matter of public notoriety and the interest of the said Richard Kangogo Chelimo having been extinguished via adverse possession.

The applicant is telling the Court untruths knowing very well that the loan by the industrial Development Corporation was made in his favour for the said purchase of ELGEYO MARAKWET/ITEN TOWN SHIP/196 and that it is him who is paying the said loan, not the applicant, as the loan was advanced for the purchase of the said land.

That the applicant has not given any reason why he is the one occupying and collecting rent out of the said property and not her.

There is no evidence on record to show that the applicant has paid even a single shilling to the Industrial and Commercial Development Corporation. The reason the said charge was made in the name of the said RICHARD KANGOGO CHELIMO was that by their agreement, since he needed the said money urgently, he agreed to have the said loan advanced under his names as it would have taken much longer to change the title and have the loan processed in his favour.

That he collected rent on the said property during the life of the said Richard Kangogo Chelimo and after his death and the applicant has no beneficial interest in the said property at all as the same was alienated to him by the deceased.

I have considered the application, supporting affidavit and replying affidavit and do find that the defendant has been collecting rent since 1999. He was in the occupation of the suit property even in the late Richard Chelimo Kangogo's life time. Mr. Kangogo died on 10th August, 1999 when the defendant was collecting rent. The family of the late Kangogo has now requested the defendant to show documents of sale which the defendant has not done. The suit property is still registered in the name of the deceased (Richard Chelimo Kangogo).

The defendant admits that he has been collecting rent from the premises for over 12 years despite the fact that the proprietor is deceased. It is not clear who is paying the loan to Industrial and Commercial Development Corporation (ICDC) but it is clear that the same was charged to the title of the deceased, Richard Chelimo Kangogo.

This court is of the considered view that in the interest of justice, the rent collected form Elgeyo Marakwet/Iten Township/196 be preserved until it is established how the defendant took possession of the suit land which is registered in the names of a deceased person. It is noted that the defendant took possession in April, 1999 whereas the late Richard Chelimo Kangogo died on 10.8.1999. It is doubtful that adverse possession applies as the defendant was in possession only for 4 months in the life time of the deceased.

The upshot of the above is that I do order that the rent collected in respect of Elgeyo Marakwet/Iten Township/196 by the defendant to be deposited into a joint interest earning account in a reputable bank to be opened in the names of the two firm Advocates appearing for the parties herein. Costs of the application in the cause.

Dated and delivered at Eldoret this 26th day of September, 2018.

A. OMBWAYO

JUDGE