

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 70 OF 2018

LUMBEI COMPANY LIMITED.....PLAINTIFF

VERSUS

KIPROTICH KEITANY.....1ST DEFENDANT

MUSA K. MAIYO.....2ND DEFENDANT

RULING

The plaintiff, **Lumbei Company Limited** has come to court against **Kiprotich Keitany** and **Musa K. Maiyo** for a declaration that the plaintiff is the registered owner and proprietor of the parcel land known as L. R. 498/376, Eldama Ravine.

The plaintiff seeks orders that the defendants are trespassers and that the defendants be evicted from the parcel of land. Moreover, that the court does issue a permanent injunction against the defendants herein either by themselves, their agents, employees and/or servants from trespassing, entering, subdividing, allocating, occupying, selling, leasing, charging, transferring, fencing, erecting structures or dealing in any way in plaintiff's piece of land.

The verifying affidavit is sworn by Gideon Toroitich, a director of the company. The plaintiff prays for temporary orders of injunction pending the hearing and determination of the suit.

The same plaintiff, Lumbei Company went to the Chief Magistrate's Court at Nakuru against Gideon K. Toroitich in Civil Cause No. 1174 of 2015 praying for a permanent injunction restraining the defendant, his agent and/or servants, employees and any other persons claiming through him from entering, interfering with the running of affairs of the plaintiff and from interfering with the suit land in any manner whatsoever.

The plaintiff filed an application for temporary orders, which application was placed before Hon. J. M. Omido in the presence of counsel for the plaintiff and in absence of counsel for the defendant, though served and the honourable court granted the plaintiff a temporary injunction restraining the defendant that is Gideon K. Toroitich by himself, his workers, employees, servants, agents and or those claiming under him from interfering in any manner whatsoever and or evicting the plaintiff from the parcel of land known as L. R. 498/376 Block 1/496, Eldama Ravine Township until the hearing and determination of the suit. The suit has not been determined.

This court finds that it will be against public policy to issue an order where there exists another order in the Lower Court.

Section 6 of the civil procedure act provides for stay of suit in such circumstances thus:-

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

The plaintiff is seeking eviction orders in the main suit which means the defendants are in occupation of the suit property and therefore, issuing an order of injunction will be tantamount to evicting the defendants. The court declines to grant any temporary order. The matter is transferred to the Chief Magistrate's Court, Nakuru to be considered with Nakuru CMCC No. 1174 of 2015. Costs of the application in the cause. Orders accordingly.

In the interest of justice, the court issues an order that status quo be maintained and that the County Land Registrar, Baringo is restrained from entering any transaction in the registration of the property until the case is heard and determined. The matter is transferred in Chief Magistrate's Court, Nakuru CMCC No. 1774 of 2015.

Dated and delivered at Eldoret this 29th day of November, 2018.

A. OMBWAYO

JUDGE