

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E&L. CASE NO. 159 OF 2016

BENSON OMBAYO MATINI PLAINTIFF

VERSUS

FREDRICK AMBUNDA1ST DEFENDANT

FLORENCE ANYONA2ND DEFENDANT

R U L I N G

The application before court is dated 25.10.2016 wherein the plaintiff seeks an order that the Honourable Court be pleased to restrain the defendants/respondents by means of temporary injunction from interfering with the plaintiff's quiet possession of the suit premises known as Eldoret Municipality Langas Phase II/Sheet 1/189 pending the hearing and determination of this suit. The plaintiff prays that costs of this application be borne by the respondents in any event.

The application is based on grounds that the Plaintiff/applicant is the registered owner of the suit premises which comprises several semi-permanent dwelling units whilst the defendants/respondents are tenants in the suit premises who do not pay rent and are a nuisance to other tenants. The situation aforesaid is untenable, unjustifiable and unfair.

The application is supported by the affidavit of Benson Ombayo Matini who states that he acquired the suit property herein from his father Matini Ali as a gift in 2015 together with all the developments thereto as evidenced by a memorandum of understanding. That the defendants who are relatives being brother and sister in-law were not happy with his father's decision and have been abusing him and threatening his tenants. That a case in point is when the defendants accosted him and physically assaulted him leading to all of them being charged in Eldoret Criminal No.3434 of 2016. That after acquiring the suit property he had himself registered at the Uasin Gishu County Registry as the rate payer. That the nuisance caused to him and his family by the defendants has become unbearable and too painful. That the defendants do not pay rent, they do not pay for water and they have compromised his ability to pay rates or even earn from his property. That he wishes that the defendants be removed from his premises for the sake of his peace and that of his investment. That pending the hearing and determination of this case he prays that the defendants be restrained from interfering with the portion of the plot they do not occupy so that he can let it to tenants and earn some income. That the defendants have been given their own plot in Mumias but they have refused to move to it choosing instead to torment him and his family.

On 4.11.2016, the court gave directions that the respondents file and serve replying affidavits within 7 days and the applicant to file supplementary affidavit within 14 days of service with submissions. This order has not been complied with and therefore the application is deemed unopposed.

I have considered the supporting affidavit on record and do find that the plaintiff has established a prima facie case with the probability of success as he is the registered owner of the property. Moreover, as the owner he is likely to suffer irreparable harm if not protected. I therefore do grant a temporary injunction restraining the defendants/respondents from interfering with the plaintiff's quiet possession of the suit premises known as Eldoret Municipality Langas Phase II/Sheet 1/189 pending the hearing and determination of this suit. Orders accordingly.

DATED AND DELIVERED AT ELDORET ON 25TH DAY OF JANUARY, 2017.

ANTONY OMBWAYO

JUDGE