

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 143 OF 2017

ANDREW KIPLIMO CHERUIYOT.....PLAINTIFF

VERSUS

MOSES KIPLAGAT CHERUIYOT.....1ST DEFENDANT

DAVID KIBET LELMET.....2ND DEFENDANT

RULING

The plaintiff, **Andrew Kiplimo Cheruiyot** has sued **Moses Kiplagat Cheruiyot** and **David Kibet Lelmet, (hereinafter referred to as defendants)** and further applies for an order of injunction to restrain the defendants by themselves, their agents, brothers, sisters, relatives, mother and/or servants from trespassing and ploughing into the plaintiff's parcel of land No. Cherangany/Nzoia Block 8/Kipkingwo/29 and that the O.C.S., Kachibora Police Station to enforce the order. The application is based on the grounds that the plaintiff/applicant is the title holder to the property in issue and that the defendants have threatened to enter and plough the plaintiff's parcel of land. The plaintiff and the defendants have sour relations that may breach the peace. That it is necessary to have injunction orders to bring orderliness. That the respondents may adversely deal with the suit land to the applicant's detriment. That the applicant stands to suffer irreparable loss. That the applicant has established a prima facie case against the respondent on account of being the title holder. That the suit land ought to be preserved during the pendency of the suit.

The application is supported by the affidavit of Andrew Kiplimo Cheruiyot who states he was allocated and do have title to parcel of land No. Cherangany/Nzoia Block 8/Kipkingwo/29 from before the date of receiving title deed and that he has been in possession and use of the same from 2000, till last year 2016 when the defendants intentionally began to trespass with an intention to annoy. The defendants do have their respective parcels of land which they plough but apparently being trouble shooters would want in a way to annoy him. The defendants being alleged cousins have created so many criminal matters against themselves that it is apparent they do intent to create one out of his parcel of land. That he does wish to avoid a confrontational scenario that may not work well for all of them. That each party to be confined to his portion of land and in his case his parcel for which he has a title thereto. The defendants' intention to trespass and plough his land would really prejudice him during this ploughing season. That an order of injunction ought to be issued against the defendants.

The respondents filed a replying affidavit sworn by Moses Kiplagat Cheruiyot who states that they are step brothers to the applicant a fact that the applicant has not disclosed. That there is Succession Cause Number Kitale High Court Succession Cause No. 137 of 2010 wherein the respondents and other beneficiaries filed affidavits of protest. In the succession cause, there is a consent receivable on how to utilize the land in contest. All parties are aware of the consent order. It is alleged that the title deed was obtained fraudulently as distribution had not been done. The application has also been instituting with status quo.

Mr. Chemwok, learned counsel for the applicant submits that the applicant is the absolute title holder of Cherangany/Nzoia Block 8/Kipkingwo/29 and has been in occupation since the year 2000 and has been ploughing upto now. Mr. Chemwok argues that the plaintiff has established a prima facie case with a probability of success and in any event, that if the court is in doubt, the balance of convenience tilts to his favour.

M/s Chege learned counsel for the respondent on her part submits that the plaintiff alleges that he acquired the land by way of inheritance and yet there is no evidence. She submits that the title was acquired fraudulently. There is an order by consent on how the parties agreed to occupy the land in dispute. The defendants are utilizing the land as per the court order made on 26.2.2014 by Justice Karanja. Mr. Chemwok further submits that the land dispute is different from L.R. 6614 and that there will be no conflict between the order in Kitale High Court Succession No 137 of 2010 and the order of the court if injunction is granted.

I have considered the application, reply and evidence on record, rival submissions and do find that though the plaintiff is the registered proprietor of the suit property, there are alleged land that he obtained title fraudulently. The plaintiff has not shown this court how he became registered as the sole proprietor of the suit property. There is a succession cause pending in Kitale Court being Succession Cause No137 of 2010.

In such circumstances, the court is inclined to determine the application on a balance of convenience as there is doubt as to whether the plaintiff has a prima facie case with a probability of success and that he is likely to suffer irreparable harm. On this issue of balance of convenience, the court finds that it tilts towards not granting an order of injunction but maintaining the status quo to be defined by the parties.

Ultimately, I do decline the grant the application but I do order that status quo to be maintained. No order as to costs.

DATED AND DELIVERED AT ELDORET THIS 31ST DAY OF JULY, 2017.

A. OMBWAYO

JUDGE