



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 112 OF 2017**

**CHELIMO CHEMOBO.....PLAINTIFF**

**VERSUS**

**JULIUS KURGAT.....DEFENDANT**

**RULING**

1. The plaintiff's application dated **26/6/2017** seeks an order of temporary injunction to restrain the defendants or their agents from "entering, remaining, trespassing, planting, erecting any structure permanent or otherwise, wasting, damaging, alienating, destroying trees, charging or any other way interfering with the plaintiff quiet possession and occupation of land No. **Cherangany/Korongoi/403**", till hearing and determination of this suit.
2. The application is premised on the grounds that the plaintiff is the absolute, sole registered owner of the suitland; the defendant has trespassed upon the suitland and ploughed 4 acres with an intent to plant potatoes this season; the defendant is destroying the trees on the farm which are of rare endangered species, the destruction of the trees shall damage the water catchment area and that the defendant has no claim or interest in the suitland whatsoever. According to the plaintiff the defendant is using violence to interfere with the land.
3. The application is opposed by the defendant who filed a replying affidavit sworn on **24/7/2017**. The defendant avers that the "Parcel No. **Cherangany/Korongoi/403 or 409**" does not exist as alleged, that the plaintiff has not subdivided the land, that the title for **Cherangany/Korongoi/62** still exists, and that the defendant has not trespassed into the plaintiff's land portion as alleged. Instead, he avers, he has only utilized his father's portion which was given to him by the plaintiff and the trees are on that portion that and he had planted cypress trees on part of that portion.
4. The defendant also disputes the veracity of the thumbprint affixed to the supporting affidavit, saying the applicant is "elderly and sick and does not come out of his compound hence the thumbprint on the supporting affidavit is not his." This allegation is not supported by any evidence.
5. The plaintiff identifies the defendant as his grandson. The land that the defendant is said to have been trespassing on is registered in the name of the plaintiff. Though the defendant denies that the original Parcel No. **Cherangany/Korongoi/62** has been subdivided, it is the plaintiff's version that the land was subdivided and it gave birth to parcels including the suitland which the plaintiff now seeks to protect in this suit. The rights of a registered proprietor are not to be defeated except as provided in the **Land Registration Act, Act No. 3 of 2012**.
6. The defendant has failed to demonstrate that Parcel No. **Cherangany/Korongoi/62** has never been subdivided. All he has availed is a copy of the green card; there is no Search Certificate. There is also no

evidence from the relevant lands office to the effect that the land is not subdivided. And even if it were true that the land has never been subdivided, then the defendant is not the registered owner thereof and has not demonstrated an interest in the land yet.

7. On the other hand, the plaintiff has demonstrated that he holds a title to a plot known as **Cherangany/Korongo/403**, the suitland.

8. In view the plaintiff has established a prima facie case with probability of success and if the property in the land, including the rare trees are wasted he may suffer irreparable loss. I therefore allow the application dated **26/6/2017**. The costs of the application shall be borne by the defendant.

Dated, signed and delivered at Kitale on this **28<sup>th</sup>** day of **September, 2017**.

**MWANGI NJOROGE**

**JUDGE**

**28/09/2017**

Before – Mwangi Njoroge Judge

Court Assistant – Picoty

Ms. Mweneke holding brief for Mr. Chebii for Respondent

Mr. Teti holding brief for Nasiki for Applicant

Ruling read in open court in the presence of counsel for the parties.

**MWANGI NJOROGE**

**JUDGE**

**28/09/2017**