



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 255 OF 2016

WESLEY KENTEL CHEMJOR.....PLAINTIFF

VERSUS

JOSEPH ROTICH.....1ST DEFENDANT

JUDA CHEROP.....2ND DEFENDANT

SILAS KIBET CHESIRE.....3RD DEFENDANT

JOSHUA LIMO.....4TH DEFENDANT

GIDEON YANO.....5TH DEFENDANT

ERICK AENGWO.....6TH DEFENDANT

PAUL KIPTOON.....7TH DEFENDANT

DANIEL TOROITICH.....8TH DEFENDANT

AMBROSE CHEPTALAM.....9TH DEFENDANT

ANNA JEPTOO.....10TH DEFENDANT

RULING

Wesley Kentel Chemjor, (hereinafter referred to as the plaintiff/applicant) has come to court against Joseph Rotich and 9 Others and specifically against the 3rd and 4th respondents seeking a conservatory order restraining them from making any further developments on or in any other way intermeddle with land parcel No. Baringo/Kapkiamo/3041 pending hearing and determination of the suit.

The application is based on grounds that the suit parcel of land is registered in his name and that the 3rd and 4th defendants have unlawfully intermeddled with the said parcel by putting up permanent structures and yet they have no legal basis as they are not the registered owners. The supporting affidavit merely reiterates the facts in the grounds of the application. In the replying affidavit, Silas Kibet Chesire states that he has no interest in parcel No. Baringo/Kapkiamo/3036, 3037, 3042 measuring $\frac{3}{4}$ of an acre. He has not constructed any permanent structure in Baringo/Kapkiamo/3041. He states that the said parcel of land is vacant.

I have considered the rival submissions by the plaintiff, defendants and the facts and evidence on record and do find that the plaintiff has demonstrated that he is the proprietor of the parcel of land Baringo/Kapkiamo/3041. The plaintiff being the proprietor of the said parcel of land is entitled to protection by the law.

This court observes that the existence of a prima facie case in favor of the plaintiff is necessary before a temporary injunction can be granted. **Prima Facie** case has been explained to mean that a serious question is to be tried in the suit and in the event of success, if the injunction be not granted the plaintiff would suffer irreparable injury. The burden is on the plaintiff to satisfy the court by leading evidence or otherwise that he has a **Prima Facie** case in his favor of him. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. The plaintiff has demonstrated that he is the registered proprietor and that he has been utilizing the land. I do find that the plaintiff has established a prima facie case with a likelihood of success.

Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that **irreparable injury** will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury. Whether the plaintiff will suffer irreparable harm if injunction is not granted, I do find that if the defendants are allowed to construct permanent structures on the plaintiff's parcel of land, the cost of demolition will be high and that the defendants might not be able to put the land back to probable use.

The court should issue an injunction where the **balance of convenience** is in favor of the plaintiff and not where the balance is in favor of the opposite party. The meaning of **balance of convenience** in favor of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favor of the plaintiffs, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the **balance of inconvenience** and it is for the plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer. In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than which is likely to arise from granting it. The balance of convenience tilts towards granting the injunction as the plaintiff will be more inconvenienced if the order of injunction is not granted as the 3rd and 4th defendants are likely to change the status of the suit land.

Ultimately, I do grant an order that the 3rd and 4th defendants or their agents are restrained from encroaching onto, making further developments on or in any other way intermeddling with land parcel No. Baringo/Kapkiamo/3041 pending the hearing of the suit. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 6TH DAY OF OCTOBER, 2017.

A. OMBWAYO

JUDGE