



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 292 OF 2013**

**CYNTHIA CHEPKEMBOI KIPTUM.....PLAINTIFF**

**VERSUS**

**MICHAEL KAMAU NJAU.....1<sup>ST</sup> DEFENDANT**

**SILA CHERUIYOT KEMBOI.....2<sup>ND</sup> DEFENDANT**

**RULING**

The 2<sup>nd</sup> defendant has come to court with an application seeking the court's definition of *status quo* in relation to the orders made on 5.2.2014 and 10.2.2015. The defendant further prays that the court does issue an order barring the plaintiff from trespassing, encroaching and/or attempting to use the subject land and property pending the hearing and determination of this application and pending the hearing of the suit in line with the orders issued on 10.2.2015 fast-tracking the hearing of the suit. The 2<sup>nd</sup> defendant also prays that there be an order barring any activity on the suit land.

The application is based on grounds that the 2<sup>nd</sup> defendant/applicant is the registered owner and has all documents in respect of the land having purchased the suit land from the 1<sup>st</sup> defendant. When the plaintiff purchased the suit land, the plaintiff had maize crop. Upon the harvesting of the maize crop, the 2<sup>nd</sup> defendant took possession of the said land only for the plaintiff to flash an order against the 1<sup>st</sup> defendant and not to 2<sup>nd</sup> defendant. When the order was issued, the 1<sup>st</sup> defendant had no interest in the land but the 2<sup>nd</sup> defendant was the person occupying the land. The 2<sup>nd</sup> defendant applied to be enjoined in the matter and applied that the orders be discharged since they affected the 2<sup>nd</sup> defendant's rights.

The orders of 5.2.2014 were obtained without full disclosure of material facts hence the court was misled in granting the same. The 2<sup>nd</sup> defendant states that there is need for the court to define status quo as at 10.2.2015 since when the orders were granted. The 2<sup>nd</sup> defendant was in possession of the land and had cultivated but the plaintiff came in and planted forcefully on account of orders made on 5.2.2014 against the 1<sup>st</sup> defendant.

The plaintiff/respondent states that the status quo was very obvious as it meant the plaintiff who had secured orders on 5.2.2014 against the 1<sup>st</sup> defendant or servants, agents barring from entering, leasing, offering for sale whole or part of the suit land and the order was to run in force until determination of the case.

I have carefully considered the facts in this matter and do find that the 2<sup>nd</sup> defendant purchased the suit land in 2012 when the plaintiff was in possession and had maize crop on the land which was due for harvest. Upon harvesting the maize, the 2<sup>nd</sup> defendant took immediate possession of the said land but was served with a court order dated 5.2.2014. The import of the court order dated 5.2.2014 is that all transaction in respect of the suit parcel of land were stopped. It is my finding that the plaintiff had been in possession of the suit land before the 2<sup>nd</sup> defendant moved in the year 2012 after the harvest. There is no clear indication how the 2<sup>nd</sup> defendant took over possession from the plaintiff. This court finds that status quo means that the order made on 5.2.2014 is in force and that the plaintiff continues occupying and using the suit land as at 5.2.2014. However, there will be no construction, sale or any disposition of the suit land or any act of wastage until hearing and determination of the suit.

**Dated and delivered at Eldoret this 24<sup>th</sup> day of November, 2017.**

**A. OMBWAYO**

**JUDGE**