

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 125 OF 2016

GEOFFREY KIPKEMBOI LELEI.....PLAINTIFF

VERSUS

ALICE JEPKOECH YANO.....DEFENDANT

RULING

Geoffrey Kipkemboi Lelei, (hereinafter referred to as the applicant) has come to court against **Alice Jepkoech Yano**, praying for an injunction restraining the defendant, her agents, police officers, auctioneers and others from encroaching, evicting, demolishing structures on the plaintiff's parcel of land known as Eldoret/Municipality Block 15/1889. The plaintiff pray that the court does issue an order authorizing the County Land Registrar and the District Land Surveyor to mark the boundary between the land registration NO. Eldoret/Municipality Block 15/1889 and Eldoret/Municipality Block 15/2051 and a report be furnished to the court.

The application is based on grounds that the plaintiff/applicant is the registered owner of that parcel of land namely Eldoret/Municipality Block 15/1889. That the defendant/respondent herein is a neighbor to the plaintiff and the proprietor of that parcel of land namely Eldoret/Municipality Block 15/2015. That the plaintiff/applicant has a common boundary with the defendant/respondent. The parcel of land namely Eldoret Municipality Block 15/2051 has no physical boundaries on the ground and hence have been affected with the eviction orders already going on. The plaintiff's parcel of land namely Eldoret/Municipality Block 15/1889 has been developed whereas the defendant has laid a claim over ownership of the plot belonging to the plaintiff/applicant.

That it will therefore be in the interest of justice if injunction is issued and the County Surveyor, Uasin Gishu County be ordered to mark the foresaid parcel of land and indicate its physical boundaries. That this application has been brought promptly and in utmost good faith. That it is in the interest of justice that this application be allowed. That the Honourable court has jurisdiction to grant the orders sought. The supporting affidavit of Geoffrey Kipkemboi Lelei reiterates the grounds of opposition.

The defendant on her part states that this sit is misconceived as eviction was carried out on her land parcel number Eldoret/Municipality/Block 15/2051. The land has been surveyed, demarcated and fenced off.

I have considered the application and supporting affidavit and rival submissions and do find that on the 20.4.2015, this court issued an order that the Uasin Gishu District Surveyor and Uasin Gishu Land Registrar do mark the boundaries between land parcels Eldoret/Municipality/Block 15/2051 and Block 15/1889 and provides a report to court. The costs of the survey were to be borne by the 6th respondent in that matter. The 6th respondent in Case No. 608 of 2012 is the plaintiff in this matter. The issues raised are the same. This court has made a determination and an order issued. I do find that the entire suit is res-judicata as the court has already made an order that the Land Registrar, Uasin Gishu should go on the ground and determine the boundary. The application dated 20.5.2016 has no basis and the same is dismissed with costs.

Dated and delivered at Eldoret this 24th day of November, 2017.

A. OMBWAYO

JUDGE