



**REPUBLIC OF KENYA**

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

**AT ELDORET**

**E & L PETITION NO. 1 OF 2013**

**IN THE MATTER OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF DEPRIVATION OF PROPERTY CONTRARY**

**TO ARTICLES 75 OF THE OLD CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF PROTECTION OF RIGHT TO PROPERTY – ARTICLE**

**40 OF THE NEW CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE REGISTRATION OF TITLES ACT**

**AND**

**IN THE MATTER OF DEPRIVATION OF LAND PARCEL NO. I.R. 17542 (L/R 10492)**

**(LATER REFERRED TO AS ELDORET MUNICIPALITY BLOCK 15/1 & ELDORET**

**MUNICIPALITY BLOCK 23 (KING'ONGO)/1-355) IN UASIN GISHU COUNTY,**

**BY AN ACT OTHER THAN COMPULSORY ACQUISITION OF LAND**

**BETWEEN**

**NATHAN TIROP KOECH.....1ST PETITIONER**

**And ZACHARIA KUMUTAI KOSGEI.....2ND PETITIONER**

**(Suing as legal administrator and on behalf of the**

**estate of THOMAS KIPKOSGEI YATOR (DECEASED)**

**EZEKIEL KIPTOO.....3RD PETITIONER**

**And ERNEST KIBET.....4TH PETITIONER**

**(Suing as legal administrator and on behalf of the  
estate of WILLIAM KIMNGENY ARAP LETING (DECEASED))**

**VERSUS**

**COMMISSIONER FOR LAND.....1ST RESPONDENT**

**CHIEF LANDS REGISTRAR.....2ND RESPONDENT**

**REGISTRAR OF TITLES.....3RD RESPONDENT**

**MINISTRY OF LANDS.....4TH RESPONDENT**

**DIRECTOR OF SURVEYS.....5TH RESPONDENT**

**ATTORNEY GENERAL.....6TH RESPONDENT**

**AND**

**NATHANIEL LAGAT.....1<sup>ST</sup> INTERESTED PARTY**

**KENYA PORTS AUTHORITY.....2<sup>ND</sup> INTERESTED PARTY**

**KENYA PIPELINE CORPORATION.....3<sup>RD</sup> INTERESTED PARTY**

**JACKSON KIPRUTO NGETICH.....4<sup>TH</sup> INTERESTED PARTY**

**RULING**

By application dated 21<sup>st</sup> April 2017, Jackson Kipruto Ngetich comes to court as an Interested Party No. 4 and seeks orders that the petitioners, either by themselves, their agents, servants, partners or any other person claiming under their title be directed and or compelled to pay 30% of the decretal sum amended in this petition and/or the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> Interested Parties be directed to pay the 4<sup>th</sup> Interested Party 30% of the decretal sum directly to the 4<sup>th</sup> Interested Party/Applicant through his lawyers Oloo & Oloo Advocates.

The application is based on the grounds that the petition was wholly initiated, researched and instituted by the 4<sup>th</sup> Interested Party at the promise of payment to him initially 25% of the decretal sum upon successful completion of the suit. This was later reviewed to 40%, and then a further 50% and later 30% with all petitioners agreeing to the sum and guaranteeing the same.

On account of the promise, the respondent spent a lot of time, money and other resources on research payment of various people in the field, Langas Valuers and generally managing all the issues around this matter for 7 years until day judgment was read. However, following the judgment, the petitioners have insinuated that they will not pay the Interested Party the agreed sum. According to the applicant, negotiation to pay have been on going on the applicant's back.

In the supporting affidavit, the applicant states that he has known the petitioners for a long time as their late father approached the law firm of Ngigi Mbugua & company Advocates to seek compensation from the people who occupied his land subject to the petition. The petitioners were unable to pay the costs and expenses of the suit and therefore, the applicant was requested to finance them. They agreed to pay the expenses and costs and therefore, he agreed to finance the suit. He states that he researched in Eldoret and the environs, Nairobi and its environs. The success of this matter was due to the research undertaken by

the applicant (Interested Party) but the petitioners have now turned against him.

Nathan Tirop Koech in reply states that the applicant is not a beneficiary of the estate of the deceased Thomas Kipkosgei Yator or William Kimng'eny Arap Letting. Moreover, that the applicant is not a party to the suit and that he is not an advocate of the High Court of Kenya and therefore cannot purport to provide legal services to the petitioners. There is no proof that payment was made by the applicant to the petitioners and any such payment would be void and unlawful. According to the petitioners, the petition was instituted, researched and argued by the firm of Kipnyekwei & Company Advocates and not the applicant.

I have considered the application and the section cited by the applicant and the submission of both counsel and do find that section 1A, 1B, 3 and 3A of the Civil Procedure Act do not apply in this matter and do not relate to any causes of action. These sections only come into place after a person has identified his cause of action and filed a suit. The applicant herein seeks substantive remedies based on breach of contract and therefore, the law of contract requires that he files a separate suit in the relevant court. Order 40, Rules 1 and 2 are not relevant as they provide for grant of temporary injunction. This court finds that the application is not based on any legal provision either in the Civil Procedure Act, Cap. 21, Laws of Kenya or the Environment and Land Court Act No 19 of 2011, and therefore, cannot be granted as prayed. The same is dismissed with costs.

**Dated and delivered at Eldoret this 21<sup>st</sup> day of November, 2017.**

**A. OMBWAYO**

**JUDGE**