



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

E&L 10 OF 2017

REUBEN CHEPKAW CHESANG.....PLAINTIFF

VERSUS

TEBEKE CHESANG.....1ST DEFENDANT

ROSE JEROTICH KANGOGO.....2ND DEFENDANT

RULING

INTRODUCTION

This is the ruling in respect of an application dated 28th April, 2017 brought by way of Notice of Motion by the plaintiff/applicant for orders :

- 1) THAT service of this application be dispensed with in the first instance.
- 2) THAT a temporary injunction be issued restraining the defendant/respondents by themselves their agents or servants or whomsoever from using, leasing any portion of, attempts to use force, surveying or subdividing, using the area village elders, chiefs and surveyors to carry out survey or subdivision in respect of or otherwise interfering with parcel of land known as **MOIBEN/MOIBEN BLOCK 3(KAPSILIAT)/67** pending the hearing and determination of this application inter-parties and the main suit.
- 3) THAT costs of this application be provided for.

This matter was brought under certificate of urgency on 8th May 2017 when the court noted that the same was not urgent and ordered the applicant to take a date in the registry. The application proceeded for hearing on 31st October 2017 when both Counsel submitted on behalf of their clients.

Plaintiff's Counsel's Submissions

Counsel for the plaintiff relied on the grounds on the face of the application together with the supporting affidavit and the annexures thereof. He submitted that the plaintiff is the registered owner of the suit land having been registered as such in 1997 as per the green card annexed as proof of ownership. Counsel further submitted that the second Respondent placed a restriction on the suit land on 6/4/16.

It was Counsel's submission that the plaintiff had allowed the respondent's family into his land when the

respondent had been charged in court with assault which later became a murder case. The plaintiff had also stood surety for the 1st respondent who is his brother in the murder case before the Eldoret court.

Mr. Cheptarus Counsel for the plaintiff also submitted that the basis of the defendants' defense is that the suit land is family land which he held in trust for the defendant. Counsel submitted that there is no evidence that the plaintiff holds the suit land in trust for the defendant as the land is solely owned by the plaintiff. He urged the court to allow the application as the plaintiff has established a prima facie case against the defendants.

Defendants' Counsel's Submissions

Counsel for the defendant/respondents opposed the application and relied on the respondent's replying affidavit dated 17 /10/17. She submitted that it is not in dispute that both parties are in possession of the suit land. It was her submission that this was family land that was registered in the plaintiff's name in trust for the family members. Miss Wamalwa submitted that the criminal cases alluded to by the plaintiff can be canvassed in another forum and not before this court. She further submitted that the applicant has not stated how he acquired the land. She urged the court to dismiss the application.

Analysis and determination.

This is an application for injunction and the principles for granting injunction are well settled. From the pleadings, the supporting documentation and the submission of both counsel, it is not disputed that the plaintiff is the registered owner of the suit land. Ownership and registration is prima facie evidence that the plaintiff has a case with a probability of success against the defendant. Section 25 and 26 of the Registration of Land Act 2012 provides for indefeasibility of title unless the same was acquire through fraud or misrepresentation.

I have perused the defence filed by the defendants and it does not have any particulars of fraud or misrepresentation on how the plaintiff acquired the title. Allegations from the bar that the plaintiff was registered as an owner in trust for the other family members without proof cannot hold any water. I will not therefore belabor much on that issue as it will be canvassed at the hearing of the main suit. The defendants have also not countered the allegation of how they entered the suit land as alleged by the plaintiff.

Having considered the application in its entirety, I find that this application has merit and is therefore allowed with costs to the plaintiff.

Parties to comply with order 11 within 30 days and fix the matter for hearing

Dated and delivered on this 21st day of November, 2017

M.A ODENY

JUDGE

Read in open court in the presence of:

Mr. Suter holding brief for Mr. Cheptarus for Plaintiff/Applicant

Mr. Koech – Court Assistant

Defendant/Respondent - Absent