

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 224 OF 2016

KELVIN KIPROTICH CHEBII.....1ST
PLAINTIFF

HARRISON KIMUTAI CHEBII.....2ND
PLAINTIFF

VERSUS

PAUL CHEBII.....1ST
DEFENDANT

SAMUEL CHEBII.....2ND
DEFENDANT

RULING

The application is dated 15.8.2016. The applicant seeks orders that there be a temporary order of injunction restraining the defendants either by themselves or through their agents, employees and or servants from ploughing, occupying erecting structures, leasing out, alienating, offering for sale, vesting or otherwise interfering with the plaintiffs’ possession of that parcel of land known as *Tulwet/Kesses Block 2 (Lessos)/221*, pending hearing and determination of the application.

The application is based on grounds that the plaintiff are the registered owners of land known as Tulwet/Kesses Block 2 (Lessos)/221. The defendants have without caution of right trespassed over to parcel of land and put up structures forcing the plaintiffs out of the land. The plaintiffs acquired the land through transmission. The land belonged to the plaintiffs’ mother and was acquired by the plaintiffs through transmission.

They resided in the land until 1997 when they were chased away by the defendants after the demise of their father but have been accessing to land for farming. Upon demise of their mother in 2004, the defendants denied them physical occupation. In 2015, the defendants set fire on the posts meant for fencing.

In the replying affidavit of Samson Kimeli, he states that parties herein are siblings but of different mothers. The plaintiffs’ mother is the 5th wife of Chebii Keibo. It is alleged that Mary Wanjiru Chebii did subdivision of L. R. Tulwet/Kesses Block 2(Lessos)/172, measuring 250 acres to reflect the parcels of land Tulwet/Kesses Block 2(Lessos) 220 and 221. No official survey was done. The defendants request that survey be carried out. It is alleged that the transmission as properties of the suit parcel of land to the plaintiff was shrouded in secrecy and concealment of relevant facts.

I have considered the pleadings, application, all relevant affidavits, and submission of parties and do find that though the plaintiffs are the registered owners of the suit parcel of land, there is an issue as to how they became the registered proprietors of the suit land which shall go for full hearing before the court. The certificate of confirmation of grant was issued on 10.3.2016 whereas the plaintiffs are registered as proprietors on 28.3.2016 and title issued on 29.3.2016. When the certificate of grant was issued and consequently transmission of the land to the plaintiffs, there was already a dispute on the ownership. The plaintiffs in their affidavit state that they were chased out in 1997 when their father died but continued cultivating until 2004 when their mother died. This indicates the existence of a dispute when the title

deed was issued and that the plaintiffs had been disposed.

The plaintiffs in the above facts demonstrates a prima facie case with probability of success as they are the registered owners. However, they have not demonstrated that they are likely to suffer irreparable harm that cannot be compensated in damages as they are not utilizing the land. The damage they have suffered if any can be assessed.

On balance of probabilities, I do find that the status quo should be maintained as the plaintiff are not in possession having been dispossessed in 2004. The application is therefor, not allowed. Ultimately the court orders that the status quo to be maintained. Costs in the cause.

Dated and delivered at Eldoret this 20th day of November, 2017.

A. OMBWAYO

JUDGE