

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 20 OF 2017 (OS)

RICHARD K. KUOMEI.....PLAINTIFF/APPLICANT

VERSUS

RICHARD KIGEN (Sued in his own capacity and as administrator of

The Estate of the late KIGEN CHEMASE)....DEFENDANT/RESPONDENT

RULING

The defendant applies to the court to issue orders that the Divisional Criminal Investigations Officer, Elgeyo Marakwet County to be directed by this Honourable court to take possession of the “agreement for purchase of land” dated Sunday 26th January, 2003 in its original form and establish who was the writer. Authenticate the signatures and identity of Pius Limo, Moris K. Kigen, Peter K. Kigen, Richard K. Kigen, Samwel K. Cheserek, Joseph Yator, Richard Koumei. Moreover, to take possession of the “agreement between Richard Kigen and Richard K. Kuomei” in its original form and establish who was the writer and to authenticate the signatures and identity cards of Elias Cheboi, Monicah Maiyo, Richard Kigen, Richard Kuomei. The Divisional Criminal Investigations Officer., Elgeyo Marakwet County to establish whether the title holder is alive or dead. Whether as at the line of alleged sale and purchase the title holder was alive. Whether Chief James Bowen on his letter dated 08.01.2017 was truthful in his sentiments.

The application is based on grounds that the applicant never sold any land to the respondent and never signed any agreement or at all with the respondent. The respondent acknowledge receipt of Kshs.10,000/= paid out as a debt which debt was repaid in full with the respondent planting 1 acre of land for 2 seasons. According to the applicant, the two agreements are a fraud.

The application is supported by the affidavit of Richard Kigen who states that the plaintiff is a mischievous person and a dare devil as he intends to defraud the defendant. He therefore, believes that it is necessary that the Divisional Criminal Investigations Officer, Elgeyo Marakwet County be brought into the picture to do a thorough job and submit a report to court. The application is opposed by the plaintiff on grounds that the application is not anchored on law and that the prayers sought are not envisaged under the Civil Procedure Act or Civil Procedure Rules, 2010.

I have considered the application, grounds of opposition and rival submissions and do find that the application is an attempt to compel the Divisional Criminal Investigations Officer, Elgeyo Marakwet County to conduct an investigation into the matter and in essence turning a civil matter into a criminal matter. Moreover, it might turn into a fishing expedition by the defendant who appears to be acting in bad faith by scandalizing the plaintiff as a dare devil mischievous person. This court will not allow any party to abuse its powers by ordering for an investigation instead of applying the Civil Procedure Act and the Evidence Act in determining disputes before it. The defendant is not applying for the documents to be examined but he wants a fully-fledged investigation which is not provided for in the civil Procedure Act Cap 21 Laws of Kenya or Civil Procedure Rules, 2010. I do find the application without basis and the same is dismissed with costs.

DATED AND DELIVERED AT ELDORET THIS 2ND DAY OF NOVEMBER, 2017.

A. OMBWAYO

JUDGE