



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 145 OF 2017

JAMES MARUTI SIRENGO (*Suing As Administrator Of The*
***Estate Of YOHANA SIRENGO MUHUANA*)..... .. PLAINTIFF**

VERSUS

1. MONICA TAPRANDICH

2. EMMANUEL KIMELI

3. WILLIAM KIMOTING (*Suing As Administrator Of The Estate*
***Of KIBET RIONGO*).....DEFENDANTS**

R U L I N G

1. The plaintiff's application dated 23/8/2017 seeks an order of temporary injunction to restrain the defendants from interfering with the plaintiff's interests in that land parcel measuring **3.5 acres** belonging to the estate of **Yohana Sirengo Muhuana** pending the hearing and determination of this suit.
2. In the supporting affidavit and the grounds at the base of the application the applicant avers that: he is the administrator of the estate of the deceased Yohana Sirengo Muhuana who was the proprietor of Land Title Number **Cherangani/Kapcherop/588 (formerly Plot No. 588 Kapcherop)**; that the deceased had bought the suit land from one **Kibet Riongo** in the year **1971**; that the plaintiff's family has been living and working on the suit land for **46 years**; that the title deed to the suit land was issued in 2015 after demise of both Yohana and Kibet; that the defendants invaded the land without any justification in March, 2017; that the defendants have prevented the plaintiff and his family from preparing the land for planting; that the defendants have also threatened to sell the land and have become violent, threatening to evict the plaintiff and his family from the land. The plaintiff avers that the defendants are in effect intermeddling with the estate and are guilty of trespass.
3. The defendants have opposed the application. In a replying affidavit sworn by one William Kibet Samoei on behalf of the defendant, the defendants deny that the plaintiff's father ever bought land from their father, and they term the plaintiff's documents as forgeries. The defendants aver that Kibet Riongo who is said to have sold land to the plaintiff's father was not their father and that the plaintiff does not know the exact location of the land on the ground.
4. It is further stated by the defendants that the applicant's family invaded the defendants' father's land while the defendants were in West Pokot but now they have vacated that land. It is therefore denied that the applicant lives on the said land. It is said that the applicant's family live elsewhere, having been asked by the local administration give up the land. There is therefore, according to the respondents, no

one living in the houses on the land and in any event the houses are illegally built on the land. There was no response to these allegations.

5. The plaintiff filed his submissions on 20/11/2017 and the defendants on 5/12/2017.

6. I have considered those rival submissions. I am persuaded that the land is now registered in the name of the defendant's father. It is clear from the record that the plaintiff and his family are not in possession of the land. The land having been registered, it is only proper that the provisions of the Land Registration Act be observed with respect to the rights of a registered owner as stated in Section 25 of the Act pending determination of this suit. I therefore find that in the circumstances of this case an order of injunction cannot issue. The application dated 23/8/2018 is hereby dismissed with no orders as to costs.

Dated, signed and delivered at Kitale on this 20th day of December, 2017.

MWANGI NJOROGE

JUDGE

20/12/2017

Before – Mwangi Njoroge Judge

Court Assistant – Isabellah

Mr. Teti for the Applicant

Mr. Chebii for Respondent (absent)

COURT:

Ruling read in open court.

MWANGI NJOROGE

JUDGE

20/12/2017