



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT KERICHO

ENVIRONMENT AND LAND CASE NO.74 OF 2016

ALEXANDER KIPNGENO K. CHUMO.....PLAINTIFF

VERSUS

JOSEPHINE KERUBO ONSASE.....1ST DEFENDANT

DISTRICT LAND REGISTRAR BOMET.....2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

RULING

(Application for injunction; plaintiff claiming that the title of the defendant does not exist and that the same overlaps his title; no map or any other concrete evidence to show that the defendant's parcel does not exist; no prima facie case established; application dismissed with costs)

This case was commenced by way of plaint filed on 30 September 2016. In his plaint, the plaintiff has pleaded that he is the registered proprietor of the land parcels Kericho/Silibwet/1771 - 1776 all of which are said to have been derived from the subdivision of the land parcel Kericho/Silibwet/818. He has pleaded that on 3 March 2016, he did a search of his parcels of land but the land parcel Kericho/Silibwet/1771 did not appear and he was not given a copy of the official search. He has pleaded that in the month of July, 2016, the 1st defendant encroached into his parcels of land No. 1773, 1774, 1775 and 1776. He has pleaded that on 7 July 2016, the Bomet District Land Registrar, named as the 2nd defendant, gave a notification that he would visit the land parcels No. 1773-1776 and on 17 August 2016, he visited the land and determined that the subdivisions No. 1773, 1774, 1775, and 1776 overlap the land parcel Kericho/Silibwet/1470 owned by the 1st defendant. It is said that this determination was illegal and without jurisdiction. The plaintiff claims that this land parcel No. 1470 does not exist but the land refers to the parcels of land that he owns. In this suit, the plaintiff has asked for the following orders :-

(a) A declaration that the actions of the 1st and 2nd defendant amounts to violation of the right to property in land parcel numbers Kericho/Silibwet/1773-1776 and the plaintiff is entitled to damages thereof.

(b) A declaration that the verdict of the 2nd defendant is illegal, unprocedural, abuse of office, lacks jurisdiction, contradicts the spirit and tenor of Chapter 6 of the Constitution hence the 2nd defendant is unfit to hold public office.

(c) An order directing the Land Registrar, Bomet County to cancel the defendant's registration as

proprietor of Kericho/Silibwet/1470 and the same be reversed to the plaintiff or in the alternative, the County Surveyor be directed to visit the scene and ascertain boundaries if there is an overlap with land registration number Kericho/Silibwet/1773-1776.

(d) Mandatory injunction restraining the 1st and 2nd defendants, its agents, servants or any other person acting on their behest from interfering, occupying or entering land parcels registration number Kericho/Silibwet /1773-1776.

(e) Costs of this suit.

(f) Any other or further relief as may seem fit to grant.

Together with the plaint, the plaintiff filed an application under certificate of urgency seeking orders inter alia that an injunction be issued restraining the 1st and 2nd defendants or their servants/agents from interfering, occupying, or entering land parcels Kericho/Silibwet/1773-1776 pending hearing and determination of the suit. The main ground upon which this application is founded is that the land parcel Kericho/Silibwet/1470 does not exist on the ground yet the 2nd defendant has directed the 1st defendant to go and occupy the said land which according to the plaintiff actually refers to the land parcel Kericho/Silibwet/1771-1776. It is the argument of the plaintiff that this land parcel No. 1470 is alleged to have come out of the subdivision of the land parcel Kericho/Silibwet/817 which is not true.

Upon service, the defendant entered appearance in person and filed a rather unconventional statement of defence. But from what I can discern, her point is that her land parcel Kericho/Silibwet/470 is properly on the ground. At the hearing of the application, she stated that the issue is nothing more than a boundary dispute. I also heard Mr. Langat for the applicant who urged me to allow the application.

I have considered the application. It is of course the contention of the plaintiff that the land parcel No. 1470 does not exist on the ground and it actually refers to his land parcels No. 1771-1776. Unfortunately, the plaintiff did not annex any Registry Index Map (RIM) to demonstrate the positions of these land parcels on the ground or show that the RIM does not reflect the parcel No. 1470. Mr. Langat argued that the report of the land registrar showed that the parcel No. 1470 was derived from a subdivision of the parcel No. 817 yet a copy of the register of this parcel No. 817 does not reflect as such. I cannot buy too much into this argument given that the search of the parcel No. 1470 was not annexed by the plaintiff, or if it does not exist, there was no evidence that there was any attempt to obtain the search for the said land parcel which revealed nothing.

The evidence tendered by the plaintiff, at this stage of the proceedings, to try and support the idea that the parcel No. 1470 does not exist or that it overlaps into parcels of land that he (the plaintiff) owns, is too thin for me to come to the conclusion that the plaintiff has demonstrated a prima facie case with a probability of success.

I am not in doubt, and therefore need not consider the balance of convenience. The result is that I find no merit in this application for injunction and it is hereby dismissed with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 28TH DAY OF OCTOBER, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

In the presence of:-

Mr. B.K. Langat for Plaintiff/Applicant

1st defendant/respondent present acting in person

2nd and 3rd defendant/respondents absent

G. Wambany Court assistant