

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

MISC. CIVIL APPLICATION NO. 28 OF 2015

TERESA CHEBICHII RUTO.....APPLICANT

VERSUS

TALELEI KIPTENAI.....RESPONDENT

RULING

The application before court is dated 31.5.2016. the applicant seeks orders that the court does issue an order that the Land Surveyor, Uasin Gishu County do demarcate the thirty six (36) acres ordered by the trial court vide its ruling delivered on 27.5.2016 and demarcate the boundary thereof for purposes of utilization pending appeal. The applicant also prays for orders that the OCS, Eldoret Central Police Station do oversee the exercise.

The application is based on grounds that the Applicant and her siblings were granted access and/or utilization of 36 acres comprised in LR No. Eldoret Municipality/Block 21(King'ong'o) 2382-2466 pending appeal vide the ruling delivered on 27th May, 2016. That there is need to establish the 36 acres ordered by court for purposes of utilization hence the need for the surveyor to establish the boundary. That after delivery of the said ruling, the respondent and/or his children have threatened the applicant and her siblings with dire consequences should they utilize the said portion as ordered by the court. That in the above light, there is a lot of acrimony on the ground between the parties herein and/or their relatives making demarcation to ascertain the acreage ordered for utilization. That orders aforementioned for utilization are still in force as the same have not been set aside and/or varied. That this application has been brought promptly in the best interest of the minor herein. That the defendant will not be prejudiced in any way should the orders herein be granted as prayed.

The application is based on affidavit of Teresa Chebichii Ruto who states that they were granted access and/or utilization of 36 acres comprised in LR No. Eldoret Municipality Block 21(King'ong'o) 2382-2466 pending appeal vide the ruling delivered on 27th May, 2016. That there is need for them to establish the 36 acres ordered by court hence the need for the surveyor to establish the boundary. That after delivery of the said ruling, the respondent and/or his children have threatened her siblings and she with dire consequences should they utilize the said portion as ordered by the court. That in the above light, there is a lot of acrimony on the ground hence making demarcation to ascertain the acreage ordered for utilization impossible. That orders aforementioned for utilization are still in force as the same have not been set aside and/or varied. That his application has been brought promptly in the best interest of justice. That the respondent will not suffer any prejudice if the orders sought are granted as prayed as he also has his portion. That she therefore pray that her application be allowed and relief sought be granted as prayed. That this application has been brought promptly in the best interest of justice.

In reply to the application dated 31.5.2016, the respondent stated that on the 5th November, 2015 he filed an application dated 5th November, 2015 seeking for stay of execution of the decree issued in Civil Suit No. E & L Case No. 515 of 2013 (OS) and he was issued with orders of stay. That since then, he has not been issued with orders of the court directing that the applicant to utilize 36.0 acres of the suit land. That so far, he is yet to be served with orders of the court to that effect. That to his knowledge in the absence such an order, the earlier orders issued by the court still subsist. That he is being advised by his counsel on record whose advice he believe to be true that this application is bad in law, fatal, defective and it raises no triable issues. That he is further advised by his counsel that the application is not supported by a Plaintiff and orders sought cannot be granted on an interlocutory application. That the application lacks merit as it does not annex any orders to be enforced. That this application is an abuse of the court process

meant to derail the respondent's appeal process.

I have considered the application, supporting affidavit and the submissions by both parties and do find that the ruling delivered on 27.5.2016 has not been set aside and therefore the application is merited as litigation in this court has come to an end. The application is granted in terms of prayers 2 and 3. Costs of the application to the applicant as there is no further cause.

DATED AND DELIVERED AT ELDORET ON 23RD DAY OF NOVEMBER, 2016.

ANTONY OMBWAYO

JUDGE