

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CIVIL CASE NO. 129 OF 2015

FRANCIS KENEBEI AYABEI.....PLAINTIFF

VERSUS

JACKSON CHANGOLE.....DEFENDANT

RULING

The application herein is dated 9.3.2015 wherein the applicant seeks an order of injunction to issue restraining the defendant by himself, his servants and/or agents or any other persons whatsoever and/or dealing with the plaintiff's parcel of land at Sokotei Village Eldume Group Ranch pending the hearing and determination of this suit.

The application is based on grounds that the plaintiff is member No. 536 of Eldume Group Ranch and is the beneficial owner of that parcel of land situated at Sokotei Village, Eldume Group Ranch. In spite of the plaintiff's ownership of the said parcel, the defendant has encroached and trespassed onto a portion and fenced it off. The said encroachment and trespass to the suit property is unlawful, without any colour of right and is incompatible with the plaintiff's right of quiet and peaceful possession, control, enjoyment, occupation and use of the suit property. The plaintiff had throughout enjoyed, the rights and obligations, consistent with ownership of the suit property and yet the defendant intends to continue with the trespass/interference unless an injunction is issued by the honourable court. The plaintiff/applicant believes that he has a *prima facie* case with tremendous chances of success and will suffer irreparable loss if the orders sought are not granted.

The application is supported by the affidavit of Francis Kebenei Ayabei who states that he is a member No. 536 of Eldume Group Ranch and the beneficial owner of that parcel of land situated at Sokotei Village, Eldume Group Ranch. He has annexed is a copy of a letter from the group ranch, Chairman confirming his membership and ownership. On/or about 6th January 2015, at night the defendant forcefully entered a portion of his parcel of land, fenced it off and threatened to harm him. He has annexed photographs showing the fence put up by the defendant. In spite of his ownership of the said parcel, the defendant has encroached and trespassed onto the said portion of land yet he is not a member of Eldume Group Ranch. He has annexed copies of letters from the land adjudication officer confirming his membership and authorizing him to sue. He has deponed that the said encroachment and trespass to his property is unlawful, without any colour of right and is incompatible with his right of quiet and peaceful possession, control, enjoyment, occupation and use of the suit property. As a result of the above encroachment, he has suffered loss and damage and the same is still continuing. He therefore urges this honourable court to come to his aid and issue an injunction restraining the defendant by himself, servants, representatives, and/or agents or any other persons whatsoever or otherwise howsoever from entering and/or trespassing upon and/or dealing with the said parcel.

The plaintiff is apprehensive that the failure by the defendant to cease trespass will occasion him irreparable loss which cannot be quantified or adequately compensated by an award of damages. As a result of the defendant said unlawful entry, interference and trespass to his property, he has suffered loss and damage and the same is still continuing. In particular, he was unable to develop the suit property as intended and therefore his rights of ownership has been compromised hence he is likely to suffer total loss of the suit property. In the circumstances, it is only fair and just that this court does compel the defendant to stop trespassing, encroaching and/or desist from further trespass therein until this case is heard and

determined.

The respondent was served but failed to file a replying affidavit and therefore in essence the application is unopposed.

The applicant argues that he has established a *prima facie* case with a likelihood of success. I have seen the letter dated 8.1.2015 confirming that the applicant is a member of the Eldume Group Ranch duly registered as No. 536. He has also annexed a letter from the Ministry of Lands, Housing and Urban Development as it then was requesting that the defendant be restrained from interfering with the plaintiff's land. He has annexed photos showing the distribution committed by the defendant in his land.

I am satisfied that the plaintiff has established a *prima facie* case with a likelihood of success and do grant prayer (3) of the Notice of Motion dated 9.3.2015 as failing to do so may cause the plaintiff irreparable injury. Costs for Applicant.

Orders accordingly.

Dated and delivered at Eldoret this 21st day of May 2015. ,

ANTONY OMBWAYO

JUDGE