



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ENVIRONMENT AND LAND CASE NO. 17 OF 2015

DAVID MARITIM YEGO..... PLAINTIFF

VERSUS

TECLA CHEPKOSGEI SITIENEL..... DEFENDANT

R U L I N G

1. This is a ruling in respect of two separate applications seeking similar reliefs. The first is the one dated 16/2/2015 brought by the plaintiff in this case. The second one is dated 22/4/2015 brought by the defendant in this case. Both application are seeking injunction orders against each other.
2. The plaintiff who is the applicant in the first application is a father in-law to the defendant who is the applicant in the second application. The applicant in the first application is seeking an injunction to restrain the defendant, her agents, servants, assigns and/or any other person acting on their behalf from entering into, developing , cultivating, leasing, selling or dealing in any manner with **L.R. No. Waitaluk/Kapkoi Block 5/Lolkeringet/6**.
3. The plaintiff is the registered owner of Waitaluk/Kapkoi Block 5/Lolkeringet/6 (suit land). The defendant is wife to the plaintiff's son Josiah Kipchumba Maritim who died on 10/5/2008 (deceased). The defendant married the deceased in church on 25/4/1997. The defendant and the deceased constructed their matrimonial home on the suit land where they lived until the demise of the deceased.
4. The applicant in the first application contends that he wants to relocate the defendant to one of his other plots at Kaplamai. The reason for the intended re-location is that it has become untenable for the defendant to live peacefully with her other relatives on the suit land. The plaintiff contends that the defendant has refused to move to the new land at Kaplamai and that this is what has necessitated the filing of this application. The plaintiff contends that he called a meeting of elders who resolved that as the defendant could not live peacefully with other members of the family on the suit land, she should be relocated to the other land which the plaintiff has at Kaplamai.
5. The defendant has denied the allegations of the plaintiff in her replying affidavit. She contends that prior to the demise of the deceased, she lived peacefully on the suit land; That the plaintiff had allocated the deceased 6 acres just like his other children; That they have been on the land where her matrimonial house is and that she has never caused any friction in the family. She contends that her problems started when her husband died. The plaintiff made sexual advances to her which advances she rejected. After she rejected the plaintiff's sexual advances, the plaintiff then demanded that she should be inherited by one of the family members who will be chosen for her. She too rejected the idea of being inherited. She contends that the plot to which she is being asked to go does not exist.
6. The defendant in her application contends that the plaintiff has prevented her from cultivating on her

six acres. That the six acres are the ones which she uses to raise money to pay for the education of her children. She contends that planting season is almost coming to an end yet she has not planted. It is on this basis that she is asking the court to restrain the plaintiff from interfering with the six acres.

7. I have gone through the two applications as well as the submissions by counsel for the parties herein. Here are two applications the gist of which are injunctive orders. The principles for grant of temporary injunctions are now well settled. First an applicant has to demonstrate that he has a prima facie case with probability of success. Secondly an injunction will not normally be issued unless the applicant might otherwise suffer irreparable loss which might not be compensated in damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.

8. In the instant case, there is no contention that the suit land is registered in the plaintiff's name. It is also not contested that the defendant is a daughter-in-law to the plaintiff and that she has lived on the suit land since she was married in 1997. The purpose of a temporary injunction is to preserve the property which is the subject of the suit. In this case what the plaintiff is seeking if granted, will amount to granting a mandatory injunction because one of the prayers in the application is seeking to bar the defendant from entering the suit land. The defendant is already in the suit land. If she is barred from entering the same land, that will amount to evicting her from the land before she is heard. This is not the purpose of a temporary injunction. The defendant is not leasing or threatening to sell the suit land or any portion of it.

9. The defendant is on the suit land by virtue of her marriage to the son of the plaintiff who is now deceased. The mere fact that the defendant has refused to stay harmoniously with other family members is not a justification for her removal from the suit land. In this regard I do not find that the plaintiff has demonstrated that he has a prima facie case with probability of success. I do not see any irreparable harm he will suffer which will not be compensated in damages. In any case even if the court were to consider the issue of convenience, still the convenience will tilt in favour of the defendant who is on the suit land based on her marriage to the deceased son of the plaintiff.

10. The defendant has deponed that the plaintiff has prevented her from utilizing the six acres. The plaintiff has not denied this. The circumstances of this case call for an injunction against the plaintiff from interfering with the six acres which the defendant has been utilizing. The defendant has demonstrated that she is wife of the son of the plaintiff. She has school going children. These children need school fees. This fees cannot be raised if the defendant will not be allowed to utilize her 6 acres. There was an argument by the plaintiff's counsel that as the defendant has not raised a counter-claim, there is no basis upon which an injunction should be granted in her favour. I do not think that this is an argument based on any legal basis. The defendant has been sued. There is no requirement that she raises a counter-claim to form the basis of her application for injunction. The defendant's remedy is clear. She is seeking protection of the court from being prevented from utilizing her six acres which the plaintiff is threatening to do in his bid to force her to move to the Kaplamia land.

11. I find that the plaintiff's application lacks merit. It does not meet the threshold for grant of temporary injunctions. The plaintiff's application is hereby dismissed with costs to the defendant. On the other hand, I find that the defendant has made out a case for grant of an injunction against the plaintiff. I grant an injunction restraining the plaintiff or any of his agents from interfering with the defendant's six acres out of L.R. No. Waitaluk/Kapkoii Block 5/Lolkeringet/6. The defendant shall have costs of the application.

It is so ordered.

Dated, signed and delivered at Kitale on this 18th day of May, 2015.

In the presence of Mr. Teti for defendant.

Court clerk – Isabellah.

E. OBAGA

JUDGE

18/5/2015