



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 87 OF 2015

BEATRICE CHEMUTAI KOSKEY (Suing as the Legal Representative and administrator of the estate of **JOHN MARITIM KOSKEI** (deceased)**1ST PLAINTIFF**

CHEPKWONY DAVID TERER**2ND PLAINTIFF**

VERSUS

KENNEDY KIPYEGON MARITIM**1ST DEFENDANT**

DENNIS KIPCHUMBA**2ND DEFENDANT**

RULING

(Application for injunction; no response to application; 1st plaintiff having acquired suit property by transmission and selling to 2nd defendant; injunction issued against defendants).

1. This suit was commenced by way of plaint filed on 24 March 2015, which was later amended on 30 March 2015. The 1st plaintiff is the legal representative of the Estate of the late John Maritim Koskei. He did acquire by way of transmission the land parcel Nakuru/Korao Settlement Scheme/239 which he later sold to the 2nd plaintiff in the year 2007 although transfer is yet to be effected. The 2nd defendant has averred that he moved into the property and started cultivating it. It is pleaded that unknown to the 1st plaintiff, the defendants fraudulently processed the title deed to the suit property and on 27 February 2015, the defendants in the company of marauding youth, forcefully gained entry into the property and demolished 3 of 5 structures put up by the 2nd plaintiff. They also proceeded to erect a structure and occupied part of the land. On 17 March 2015, the defendants demolished the 2nd plaintiff's remaining 2 houses thus displacing him and his family. In the suit, the plaintiffs have sought orders that they are the lawful owners of the suit property; vacant possession; surrender of the original title deed; eviction and a permanent injunction.

2. The plaintiffs also filed an application for injunction, to restrain the defendants from the suit property pending hearing of the suit. It is that application which is the subject of this ruling. The application is supported by the affidavit of the 1st plaintiff which has more or less repeated the averments that I have outlined above. There is no reply to the application although the defendants have entered appearance and filed defence. In their defence, they have pleaded that the land comprises the estate of their deceased father and they are fully entitled to the same. They also want orders to have the 2nd plaintiff forcefully evicted as he purchased the land without the consent of the family.

3. I have considered the application. As I stated earlier, the defendants have not responded to it. The

averments of fact contained in the supporting affidavit are therefore uncontroverted. I have seen a copy of the Certificate of Confirmation of Grant issued in Nakuru High Court Succession Cause No. 240 of 1995. The same shows that the whole of the suit property was devolved to the 1st plaintiff. I have also seen an agreement dated 22 September 2007 through which the suit property was sold to the 2nd plaintiff. I have similarly seen a copy of the title deed to the suit property which was issued on 12 October 2005 in the name of John Maritim Koskei (deceased).

4. I am of the view that the plaintiffs have demonstrated that the property was vested in the 1st plaintiff by way of transmission and the 1st plaintiff transferred her interest to the 2nd plaintiff. The defendants have not given me any material showing that they have any entitlement to the suit property. They also had no right to forcefully move into the property and evict the 2nd plaintiff. If they felt that they had any grievance, the avenue ought to have been for them to file suit in a court of law, not to apply jungle law. I am satisfied that the plaintiffs have demonstrated a prima facie case with a probability of success.

5. I therefore order the defendants not to enter, be upon or in any other way interfere with the plaintiffs' possession of the suit property, pending hearing and determination of this suit. If they are in possession, I order that they vacate and stay away for the duration of this suit. I also issue an order of inhibition, inhibiting the registration of any disposition in the register of the suit property. Costs of the application will be costs in the cause.

6. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 21ST day of October 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :

Mr. Njenga holding brief for Mr Orege of M/S Rodi Orege & Co advocates for plaintiffs/applicants.

N/A for M/s B. I Otieno & Co. advocates for defendants/respondents

CA: Janet

MUNYAO SILA

JUDGE

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