



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L NO. 289 OF 2014

“FAST TRACK”

JONATHAN KIMAIYO MENGICH

LUKA KIPKOECH CHELAL

LUKA KIPLELEI KOTUT as trustees of

KERIO SOUTH TEACHERS HOUSE.....PLAINTIFFS

VERSUS

DAVID KIPRONO.....DEFENDANT

RULING

The plaintiffs have sued the defendant describing themselves as trustees of Kerio South Teachers House. They claim that at all times material to this suit, they have and are still the registered proprietors of that parcel of land known as **ELDORET MUNICIPALITY/BLOCK 7/156** (originally unsurveyed Plot No. 10) situated within Eldoret town the same having been allocated to them vide a Letter of Allotment dated 6th May, 1981 issued to them under their former names Kerio South Teachers Organization.

The Plaintiffs' members consisted mainly of teachers from former Kerio South Constituency who came together in the early 1980s and formed themselves into a group and started collecting funds from members with intent to invest and benefit members. They thereafter made an application for a plot from the Government and were allocated the aforesaid parcel. A formal lease was granted to them on 4th September, 1998 and a Certificate of Lease was subsequently issues to them on 9th July, 1999.

The plaintiffs initially sought to recruit as many members as possible from among teachers of the then Kerio South Constituency. Each member was to pay a membership fee of Kshs.100 as well as purchase a share for Kshs.1,000/=. The organisation had interests in a parcel of land known as Crowel Farm, a school and the town plot aforesaid. Each member was expected to indicate whether he/she wanted a share in the town plot, Crowel Farm or both and had to pay for shares according to his/her choice.

By the year 2000, only 46 members had fully paid up their shares having expressed their interest in the town plot. It is these 46 members who have been paying rates as well as rent in respect of the said parcel To-date on their own. These members subsequently resolved to stop further recruitment and have accordingly registered the entity as a limited liability company known as Kerio South Teachers House Limited (Registration Number CPR/2011).

Sometime in May 2013, the defendant, who is a member of the Kenya National Union of Teachers (KNUT) Chepkorio/Kabiemit Branch Executive Committee, formed an amorphous entity calling itself Kerio South Teachers Housing. They set up an Interim Committee consisting of Josphat Katui (Interim Chairman), the defendant (Interim Secretary), Samuel Kiprabung (Interim Treasurer) and Helen Kipng'etich and Musa Busienei (Interim members) and opened an account with Keiyo Teachers Sacco (A/c No. 5041007201).

The defendant has since then been the main actor in convening meetings and summoning the plaintiffs who have on some occasions attended such meetings and explained the position to the defendant and his group.

It has since turned out that the defendant has gone ahead and had a restriction registered against the title to the land parcel known as ELDORET MUNICIPALITY/BLOCK 7/156 allegedly on account of a dispute as to membership within '**Kerio South Teachers Housing**' which is not – and has never been the owner of the said parcel of land.

On or about 10th September, 2014, the defendant and a group of unidentified individuals went to the aforesaid property and threatened tenants therein with eviction should they fail to remit the monthly rent to them with effect from the month of September, 2014.

On 12th September, 2014, the plaintiffs reported the incident at Eldoret Central Police Station vide O.B. No. 53/11/9/2014. The defendant and his group were summoned to the police station by the Deputy OCS on 15th September, 2014 who upon being asked the basis of their claim and to produce evidence to support their claim, they admitted that they had no documents to support their claim but were simply claiming it on behalf of the teachers resident within Keiyo South Sub-County.

The defendant had convened a meeting set for 20th September, 2014 using letters bearing the name Kerio South Teachers House allegedly to discuss important and crucial matters concerning the "**Kerio South Teachers Housing Plot in Eldoret town**". The plaintiffs aver that these acts amount to fraud, misrepresentation and illegality on the part of the defendant and his amorphous, illegal group.

The particulars of fraud, misrepresentation and illegality on the part of the defendant and his agents are the fact that the defendant adopted the name "**Kerio South Teachers Housing**" so as to make it appear as the same entity with the plaintiffs' entity with the sole intention of misleading members of the public that the two are one and the same entity and using letterheads bearing the name of the plaintiff's entity in a bid to justify their intended illegal take-over of the plaintiff's land parcel known as Eldoret Municipality/Block 7/156 and Inciting teachers residing within Keiyo South Constituency that the property belongs to them whether or not they registered as members with the plaintiffs' entity. Moreover, seeking to illegally and irregularly take over possession and ownership of the plaintiffs' land parcel known as ELDORET MUNICIPALITY/BLOCK 7/156 without following due process and collecting money from unsuspecting teachers of Keiyo South Sub-County allegedly for purposes of 'reclaiming' their plot amongst other allegations.

The plaintiffs' claim is thus for a declaration that the land parcel known as ELDORET MUNICIPALITY/BLOCK 7/156 belongs to them absolutely and for orders of permanent injunction to restrain the defendant and his agents from continuing with their acts of trespass and interference with the plaintiffs and their tenants' quiet possession thereof.

The plaintiff prays for orders *inter alia* that a declaration that the plaintiffs are the lawful owners of the land parcel known as ELDORET MUNICIPALITY/BLOCK 7/156 on behalf of the 46 members of Kerio South Teachers House and orders of permanent injunction restraining the defendant either by himself or through his agents, employees and/or servants from encroaching, trespassing onto, wasting, erecting structures, using the plaintiffs' name or otherwise interfering with the plaintiffs' use and quiet possession of the land parcel known as ELDORET MUNICIPALITY/BLOCK 7/156. They also pray for costs of the suit and interest thereon at court rates.

The defendant on his part filed defence and counterclaim claiming that he was a member of KNUT Executive Committee. He claims that the plaintiffs were fraudulently registered as the owners of the suit parcel and give the particulars of fraud as *interalia*, fraudulently obtaining title in the names without the knowledge of the teachers and fraudulently changing the name of the organization from Kerio South Teachers organization to Kerio Teachers House. The defendant avers that the subject property was acquired with the assistance of the then Member of Parliament Hon. K. N. K. Biwott on behalf of and for the benefit of all the teachers in Keiyo South Constituency both retired and active, but not exclusively for the plaintiffs and a few individuals and that all the payments required then at the acquisition was made by the said Hon. Member of Parliament. The plaintiffs did not pay any monies then, and the plaintiffs have no right whatsoever to claim sole ownership of the same.

On the 9.2.2015, Barnabas Lagat, Samuel Kietany, Sila Serem, Peris Chebet, Nehemia Cheprop, Sally Bowen, Josphat Katui, Paul K. Kiptum, Daniel Kiprono Kipyego, Samuel Aiyabei Kiprabung and Moses Kipkemboi Komen applied to be enjoined as petitioners and or defendants to the suit. The application is based on grounds that the applicants are the legal owners and or beneficiaries of the suit parcel and represent both their interests and those of their Kenya National Union of Teachers Branch Offices. However, the plaintiffs maliciously excluded them in the pleadings herein. The applicants claim that they have valid interests over the subject matter and hence the need to participate in these proceedings.

The applicants filed sworn affidavits in support of the application. The common facts in the affidavits are that the applicants are teachers and former and/or current officials of KNUT and that the subject land belongs to the teachers of Keiyo South.

The application was opposed by the plaintiffs through an affidavit filed by Jonathan Kimaiyo Mengich who states that the applicants have not demonstrated their interest in the matter based on the provisions of Section 24, 25 or 30 of the Land Registration Act, 2012. That a claim that a person is a teacher cannot confer any juridical interest in land and that the joinder of the intended defendants shall lead to confusion in the litigation as the suit shall now have a multiplicity of parties who are devoid of any existing interest in the suit land. That the intended defendants have not satisfied the test set in Order 1, Rule 3 of the Civil Procedure Rules, 2010 as they have no demand against the intended defendants in terms of Order 4, Rule 5 of the Civil Procedure Rules, 2010 to warrant their joinder. That the intended defendants have not been demonstrated by way of intended proposed amendments to the pleadings what interests or claims they have in the suit.

M/s Kipsei submits that the applicants are legal owners of the suit property being the teachers of Keiyo South. She refers to paragraph 4 of the Plaint that infers ownership of the property by Keiyo teachers.

Mr. Kigamwa argues that the applicants do not satisfy the provision of Order 1, Rule 10 of the Civil Procedure Rules, 2010. Since restriction was lodged by the defendant, the plaintiff could not sue anybody else other than the person who entered a restriction.

I have considered the application by the persons intended to be joined and the evidence on record without going into its merit and do find that the suit herein has many connected issues such as membership of Kerio South Teachers House of Eldoret which was registered with the office of the District Gender and Social Development Officer as a Self Help Group or project on 11.2.2010, in Eldoret East District. The legal question is, what were the objectives of the project or Self Help Group and how the same was converted into a Limited Liability Company and that was the property allocated to the teachers as individuals or to the self help group or to the limited liability company.

I do find that the applicants being teachers, former and current official of Knut from Keiyo South have a right to be enjoined in the suit **as interested parties**. It is my view that even if the applicants filed a separate suit against the plaintiffs and defendant the issue will remain the same as to whether the suit

property was allocated to all teachers of Keiyo South or a certain number of teachers. The other issue for determination which will involve the applicants is whether the teachers who did not become members of Kerio South Teachers House held any interest in the property by virtue of being teachers from Keiyo South. I do order that they be enjoined, however, they should file a joint defence, witness statements and documents they seek to rely on within 15 days from the date of this order.

DATED AND DELIVERED AT ELDORET THIS 2ND DAY OF OCTOBER, 2015.

ANTONY OMBWAYO

JUDGE