



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E&L 556 OF 2013**

**PIUS BIWOTT KIPROTICH.....PLAINTIFF**

**VS**

**YUSUF KIMUTAI.....DEFENDANT**

***(Application for injunction; plaintiff claiming to be legitimate owner of suit land; defendant not filing any documents to oppose the application; no reason why application ought to be disallowed; application for injunction allowed)***

**RULING**

This ruling is in respect of the application dated 31 December 2013 filed by the plaintiff. It is an application for injunction. Pending the hearing of this suit, the plaintiff wants the defendant restrained from trespassing, destroying property or interfering with the plaintiff's user, developments and/or constructing on the land parcel described as *Commercial-Cum Residential Plot PDP No. 17/96/65A Sub-Plot No. 9 Zone E* (the suit land). Despite being served with the application, the defendant has not responded to it. Indeed, he has not yet entered appearance in this matter.

The case of the plaintiff is that he was allotted the suit land in the year 1997 and that he has been in occupation of the suit land since then. He has averred that he is the sole rate payer to the Municipal Council of Eldoret. It is his case that in the month of December 2013, the defendant came into the land and claimed to be the owner. The plaintiff has contended that the allotment letter and clearance certificates which the defendant holds, are fake. He has stated that the defendant has now proceeded to interfere with his constructions on the land and harassing his workers. He has voiced concern that the defendant may use his fake documents to sell or obtain title to the land.

The plaintiff annexed a letter of allotment dated 16 February 1997 through which the suit land was allotted to him by the Municipal Council of Eldoret. He also annexed a rate payment receipt for the suit land.

As stated earlier, the defendant has opted not to respond to this application. From the material before me, and in the absence of any material in opposition, it is apparent that the plaintiff has a sound claim to the suit land. He has demonstrated a prima facie case. If the injunction is not issued, the defendant may continue interfering with the plaintiff's quiet possession of the property which will cause the plaintiff loss. I am not in doubt, but in the event that I was, I would still have allowed the application for injunction as the plaintiff is in occupation of the suit land and therefore the balance of convenience is in his favour.

I see no reason why I ought to decline this application. It is hereby allowed. I restrain the defendant from entering or remaining in the suit land. I further restrain him from interfering with the construction works on the suit land, or in any other way, impede the plaintiff's quiet possession of the suit land. This order is to remain in force until the conclusion of this matter.

As to costs, the same shall be costs in the cause.

It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 26TH DAY OF FEBRUARY 2014**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET.**

*Delivered in the presence of:*

*Mr. F. Mwaka holding brief for M/s Wambua Kigama for plaintiff*