

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L 348 OF 2013

STEPHEN KIPROTICH SAINA.....PLAINTIFF

VS

FRANCISCO OKUTOYI AYOT & ANOTHER.....DEFENDANT

RULING

Before me is an application dated 22 November 2013 filed by the plaintiff. The main prayer is for an order to stop the District Officer (D.O), Kapcherop Division, from seeking to determine the subject matter of this suit for the reason that the same is pending in court. In this case, the plaintiff has claimed that he is the registered owner of the land parcel Cherangany/Kapcherop/1029 and 1030 and that the defendants have trespassed into the land parcel No. 1030. The suit was instituted on 13 June 2013.

In this application, it is the contention of the plaintiff that through letters dated 30 October and 14 November 2013, the D.O, wrote to the plaintiff advising that he would visit the site and resolve the dispute and asked the parties to come with their witnesses. It is averred that failure to attend may lead to the dispute being resolved without the input of the party who is absent. It is this action that the plaintiff seeks to stop for the reason that the matter is pending in court.

I need not make a lengthy ruling, for despite filing a response to the application, the defendants conceded to the application when the matter came up for inter-partes hearing. I also do not see why I should deny the plaintiff the prayers sought. That said, I am not necessarily averse to the provincial administration, or any person or entity for that matter, attempting to resolve matters within their areas of influence; any attempt at an out of court settlement is always welcome, if not encouraged. However, no party ought to be compelled or threatened by consequences if he/she is not comfortable with the mediation process, which appears to be the case in this matter. This is especially so when the matter is pending in court.

For the above reasons, the application dated 22 November 2013 is allowed and I order the D.O to desist from interfering with the dispute unless both parties are agreeable to his mediation and unless authorized by court. I however make no orders as to costs.

DATED AND DELIVERED AT ELDORET THIS 27TH DAY OF MARCH 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET.

Delivered in the presence of:

Mr. C.F. Otieno holding brief for M/s Cheptarus for plaintiff

Defendants – present acting in person