

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L NO. 72 OF 2014

LENAH JEMELI.....PLAINTIFF

VS

CHARLES KIMURGOR CHEPKWONY.....DEFENDANT

(Application for injunction; plaintiff claiming to have bought suit land from a 3rd party who purchased from defendant; no proof of title of defendant or proof of consent; plaintiff's case doubtful; balance of convenience; status quo to be maintained).

RULING

This suit was commenced through a plaint filed on 5 March 2014. Simultaneously with the plaint, the plaintiff filed an application for injunction under the provisions of Order 40 Rule 1, which is the subject of this ruling. It is the plaintiff's case that she purchased a portion of 0.1 acres of the land parcel Uasin Gishu/ Kuinet 'B' Scheme/130 from one Joseph Kipyegon Kebenei. The said Joseph Kebenei had in turn purchased about 0.5 acres of the same land from Charles Chepkwony who is the defendant herein. In the plaint, the plaintiff has sought orders that she be declared owner and lawful proprietor of the said portion of 0.1 acres and a declaration that the defendant is a trespasser on the said portion of land. She has also sought orders that the defendant be permanently restrained from the said portion of land. In her supporting affidavit to this suit, the plaintiff has annexed the agreement through which Joseph Kebenei bought 0.5 acres of the suit land from the defendant, and the agreement between herself and Joseph Kebenei, in which she purchased 0.1 acres of the suit land. She has also averred that she has made a residential house on the said land.

Despite being served with the suit papers and the application, the defendant did not file any reply to this application. Indeed, he has not yet entered appearance to this suit.

The application before me is an application for injunction. The principles upon which a court is to assess an application for injunction were laid out in the case of ***Giella v Cassman Brown (1973) EA 358***. In the said case, it was held that first, the court needs to be satisfied that the applicant has laid out a prima facie case with a probability of success; be alive to the tenet that an injunction will not normally be granted unless damages are an inadequate remedy; and if in doubt, decide the matter on a balance of convenience.

To assess whether a party has laid out a prima facie case will inevitably involve a preliminary assessment of the applicant's case. The only material before me is that provided by the plaintiff as the defendant has not supplied any, to contest the case of the plaintiff.

The case of the plaintiff is that she bought 0.1 acres of the suit land from a seller who had in turn bought a bigger portion from the defendant. I have seen the agreements annexed but no copy of title, nor search, of the suit property has been annexed. I cannot tell for sure whether the defendant ever properly owned the suit land. Neither have I seen any transfer from the defendant to the said Joseph Kebenei. It is not clear to me whether the said Joseph Kebenei had a title to pass to the plaintiff. Moreover, a cursory look at the description of the land, makes me believe that the said land is agricultural land for which the consent of the Land Control Board is mandatory as required by Section 6 of the Land Control Act (CAP 302) Laws of Kenya. I therefore have serious doubts about the case of the plaintiff and I am unable to state, at this point of the proceedings, that the plaintiff has laid out a prima facie case with a probability of success.

Being in doubt, I will decide the application on a balance of convenience. The convenience lies in having

the suit land kept in the status that it is pending the hearing of the suit. I have seen that the plaintiff is in possession of the claimed portion and she has made a structure on it. May this position, which is the status quo, be maintained pending hearing and determination of this suit. I therefore restrain the defendant from interfering with the plaintiff's possession of this 0.1 portion of the suit land pending hearing of this suit.

The costs of the application shall be costs in the suit.

It is hereby ordered.

DATED AND DELIVERED AT ELDORET THIS 31ST DAY OF JULY 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Delivered in the presence of:

Mr. E.M. Balongo holding brief for Mr. Onkangi for the plaintiff/applicant.

Defendant – Absent.