



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E&L NO. 346 OF 2013

SAMSON K.A. TIM.....PLAINTIFF

VS

GRACE KIMOI BITOK.....1ST DEFENDANT

COLLINS BITOK.....2ND DEFENDANT

ELVIS K. BITOK.....3RD DEFENDANT

NELSON O. ODHIAMBO 286.....4TH DEFENDANT

HON. ATTORNEY GENERAL.....5TH DEFENDANT

(Application for injunction; no response filed to the application; application allowed)

RULING

This ruling is in respect of an application for injunction dated 24 February 2014 filed by the plaintiff . It seeks to bar the defendants from dealing with the land parcels Lembus/Torong/790, 791 and 792 pending hearing and determination of this suit. Before I go to the gist of the application, I think it is prudent that I lay down a little background to this suit.

This suit was commenced by way of plaint filed on 18 June 2013. In his plaint, the plaintiff, who is acting in person, pleaded that he is the registered owner of the land parcel Lembus/Torong/402 which he acquired by way of transmission after filing a succession cause for the estate of his father, one Kiptim Lagat (deceased). He then proceeded to sub-divide the said land into three, being Lembus/Torong/790, 791 and 792. All this, was done without the objection of the defendants. The 1st defendant was married to the plaintiff's late brother, one Joseph Kiptim, who died in the year 1976 and left two children, Joyce Jesang Bitok and Mathew Kipruto Bitok. The plaintiff has averred that his attempts to transfer the land parcel No. 792 to the two children has been frustrated by the defendants. The plaintiff has further pleaded that the 1st defendant was to blame for the death of his deceased brother and is therefore not entitled to inherit the estate, which in his view, should go to the two children. The 2nd and 3rd defendants are sons of the 1st defendant. The plaintiff has pleaded that there has been trouble on the ground as to the occupation of the three land parcels, including the averment, that the defendants have tampered with the beacons. On 8 February 2011, it is stated that the 2nd defendant lodged a caution, with the assistance of the 4th defendant, which is said to have been done improperly. It is also averred that the 4th defendant has colluded with the 1st-3rd defendants and a son of the plaintiff, namely Thomas Kiptim, to frustrate the plaintiff from accessing the properties in issue. The plaintiff has pleaded that as registered owner, he is

entitled to exclusive use of the properties. He has pleaded that he has tried to have the 1st-3rd defendants vacate the property in vain. In his suit, the plaintiff wants a declaration that the 1st -3rd defendants are trespassers on the land parcels Lembus/Torongo/790,791, and 792 and has asked for eviction orders. He also wants the defendants permanently restrained from the said land and an order directing the 4th defendant to remove the caution in the register of the said parcels of land. He has also sought mesne profits and costs.

The 1st - 3rd defendants filed a Statement of Defence through the law firm of M/s W. Kigen & Company Advocates. It was averred that the plaintiff secretly filed the succession cause Nakuru High Court No. 57 of 2008 Re Estate of Kiptim Lagat Kotut (deceased) and obtained a grant. It was claimed that the plaintiff deliberately failed to disclose the survivors of the estate of Kotut and that the plaintiff after obtaining the grant, transferred the land parcel No. 402 to himself as sole beneficiary and subsequently sub-divided the land into the three parcel Nos. 790, 791 and 792. It was pleaded that the 1st -3rd defendants filed an application to revoke or annul the grant obtained by the plaintiff, which is pending before the High Court in Nakuru, and it was said that there are interim orders in favour of the defendants. As to the caution, the 1st -3rd defendants denied placing the caution.

The 4th and 5th defendants filed Defence through the State Law Office. They stated that there is a caution in the register of the land, registered by one Thomas Kiptim, but have otherwise denied all the plaintiff's allegations.

The matter was fixed for mention on 21 January 2014. On that day, Mr. Songoyo, appeared for the 1st-3rd defendants. The plaintiff raised issue as to the representation of the 1st -3rd defendants by Mr. Songoyo, as he stated that Mr. Songoyo, did not have a practicing certificate. He tabled a letter from the Law Society of Kenya, which seemed to support his contention. Being faced with this allegation, I directed the proprietor of the law firm of M/s W. Kigen & Company Advocates to draw and file an affidavit to state whether he and his associate, Mr. Songoyo, were licenced to practice. No affidavit was filed within the prescribed time, and the only reasonable conclusion I could reach was that both the proprietor of M/s W. Kigen & Company Advocates, and Mr. Songoyo, held no practicing certificates and were therefore unqualified to purport to appear for the 1st -3rd defendants. I proceeded to strike out the Statement of Defence and all other documents filed by the law firm of M/s W. Kigen & Company Advocates and ordered the firm of M/s W.Kigen & Company Advocates to pay the costs thereof. I then gave a hearing date for 17 November 2014 for the main suit.

The plaintiff, on 26 February 2014, then filed the present application seeking orders to have the defendants restrained from dealing with the suit land parcels Lembus/Torongo/790,791 and 792 pending the hearing of this suit.

On 13 March 2014, the 1st-3rd defendants appointed the firm of M/s Komen Kipchirchir & Company Advocates to act for them. When this application first came before me on 17 March 2014, Mr. Komen for the 1st -3rd defendants sought adjournment so that he may file a response to the said application. I allowed counsel time to file the said response, but none was filed. Neither did Mr. Komen appear on the 9 July 2014 when the application was heard inter-partes.

The only material that I have is therefore that provided by the plaintiff. In his supporting affidavit, the plaintiff has annexed the titles to the three suit lands. The same show that he is the registered owner. He has averred that he properly acquired title through transmission. He has stated that he cannot enjoy the said parcels of land owing to interference by the 1st - 3rd defendants.

As matters stand, the defendants have no defence on record and have not replied to the application filed by the plaintiff. Since the plaintiff has demonstrated that he is the registered owner of the suit parcels of land, I think he has demonstrated a prima facie case with a probability of success. I have no material from the defendants that contest the title of the plaintiff. In my view, the plaintiff is therefore entitled to an injunction as against the 1st , 2nd and 3rd defendants.

I therefore allow the plaintiff's application. I order that pending the hearing and determination of this suit,

there be an order of injunction barring the 1st-3rd defendants from wasting, ploughing, leasing, grazing livestock, selling, alienating, charging, sub-dividing, or otherwise dealing with the land parcels Lembus/Torongu/790, 791 and 792.

The costs of this application shall be costs in the cause. It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 30TH DAY OF SEPTEMBER 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Delivered in the presence of:

Delivered in the presence of:

The plaintiff acting in person.

No Appearance for M/s Komen Kipchirchir & Co Advocates for the defendants.