



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L NO. 29 OF 2013

ANNA CHEROP CHEPSIROR.....PLAINTIFF

VS

MUNICIPAL COUNCIL OF ELDORET.....1ST DEFENDANT

DISTRICT LAND REGISTRAR, UASIN GISHU.....2ND DEFENDANT

THE COUNTY GOVERNMENT OF UASIN GISHU.....3RD DEFENDANT

(Plaintiff filing second suit on same subject matter; plaintiff having failed to secure an injunction in the first suit; plaintiff securing orders of status quo in second suit; whether second suit should be allowed to subsist; suit declared to be an abuse of the process of court; suit struck out with costs)

RULING

This suit was commenced on 21 January 2013 by way of plaint. The defendants are named as the Municipal Council of Eldoret and The District Land Registrar, Uasin Gishu. The subject matter in issue is the property Eldoret Municipality Block 8/586. It is the case of the plaintiff that she bought the suit property from a company called Somog Limited which led to her being registered as proprietor on 21 March 2007. It is her case that the defendants have interfered with her property. The prayers sought are for orders of permanent injunction and a declaration that that the actions of the defendants are illegal.

Prior to the filing of this suit, the plaintiff had on 18 February 2008 filed the suit Eldoret High Court Civil Suit No. 7 of 2008. The defendant in that case is the Municipal Council of Eldoret. In the plaint, it was pleaded that the plaintiff is the owner of the property Eldoret Municipality Block 8/586 and that she purchased the property from Somog Limited. She pleaded that the Municipal Council of Eldoret had been interfering with her possession of the said land which culminated in the filing of the suit. In the plaint, she sought a declaration that the defendant was a trespasser, a permanent injunction to restrain the defendant from interfering with her possession, and a mandatory order to compel the defendants to remove their servants/agents from the property. Together with the plaint, the plaintiff filed an application for injunction. Ruling was delivered on 21 April 2008 with the application for injunction being dismissed by Ibrahim J (as he then was). The judge held that the plaintiff do vacate the suit premises and the employees of the Municipal Council of Eldoret be restored to the property.

The plaint in Eldoret HCCC No. 7 of 2008 was later amended to include the Anti-Corruption Authority as 2nd defendant.

When the suit herein was commenced, the plaintiff did not disclose the existence of the suit that was filed in the year 2008. On 11 September 2013, the plaintiff filed an application for injunction, to restrain the defendants from interfering with her quiet possession of the suit land. By a consent entered into on 6

November 2013, the parties agreed to maintain the status quo, which apparently, at least according to the valuation report tendered, was that the plaintiff was in possession. On 19 February 2014, the Ethics and Anti-Corruption Authority, filed an application to be enjoined to this suit. In their application, they pointed out that the plaintiff had earlier filed the suit Eldoret HCCC No. 7 of 2008. That application for joinder was allowed by consent.

Being alive to the fact that there are two suits pending over the same subject matter, on my own motion, I asked Mr. Njuguna, counsel for the plaintiff to show cause why this suit should not be dismissed as being res judicata. I directed Mr. Njuguna to file an affidavit to demonstrate this and gave a date for oral submissions. No affidavit was ever filed and Mr. Njuguna did not appear to make any oral submissions when the matter came up on 8 October 2014. All other counsels asked that this suit be dismissed as being an abuse of the process of court.

I am in agreement with their submissions. When the plaintiff filed this suit, she did not disclose the existence of the other suit. Section 6 of the Civil Procedure Rules also bars the court from proceeding with a suit where the issues are substantially in issue in a previous suit. In my view, this case was filed so as to circumvent the order of 21 April 2008.

Although the plaintiff has in this suit added the Land Registrar as defendant, she had the option of amending the plaint to include the said party, rather than file another suit seeking the same orders as in the previous suit.

Whichever way I look at it, this suit is an abuse of the process of court. I have no option but to strike it out with costs to the defendants and interested party. All orders issued herein are hereby vacated.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 29TH DAY OF OCTOBER 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Delivered in the presence of:

Mr. J.N. Njuguna present for plaintiff.

Mr. H.O. Aseso present for 1st and 3rd defendants.

Ms L.M. Lung'u present for 2nd defendant.

Mrs. C. Natome present for interested party.