

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L NO. 115 OF 2014

ABRAHAM KIPTANUI KIPKECH.....PLAINTIFF

VS

BEN CHANGWONY KIPROP.....DEFENDANT

(Application for injunction; plaintiff owner of suit land; defendant alleged to have entered suit land without permission of plaintiff; defendant not filing any response to the application; material tabled by the applicant uncontroverted; prima facie case established; application allowed)

RULING

Through a plaint filed on 10 April 2014, the plaintiff has pleaded that he is the legal owner of the land parcel Lelan/Kaptalamwa/658 measuring 46 acres (the suit land). It is his case that on 1 March 2014, the defendant unlawfully entered the land and fenced off 4 acres of it without the consent or authority of the plaintiff. He has pleaded that the defendant is a total stranger to him, and despite a demand being given to him to vacate the said land, the defendant has refused to do so hence this litigation. The main prayers sought in the plaint are orders of eviction and a permanent injunction against the defendant.

Together with the plaint, the plaintiff filed an application for injunction which is the subject of this ruling. The plaintiff wants the defendant restrained from the suit land pending hearing and determination of this suit. To the supporting affidavit, the plaintiff has annexed a copy of the title.

Despite being served, the defendant has not yet entered appearance nor filed defence. Neither has he bothered to file any response to this application. The material before me is only that availed by the plaintiff. The same demonstrates that the plaintiff is the lawful owner of the suit land. The defendant had opportunity to show that he is entitled to be on the suit land which he has not. Clearly, the plaintiff has demonstrated a prima facie case with a probability of success. He is entitled to an injunction.

I therefore allow this application for injunction. I order the defendant and/or his servants/agents/assigns, not to enter, be upon, cultivate, develop, or in any other way utilize or interfere with the land parcel Lelan/Kaptalamwa/658 pending hearing and determination of this suit.

Costs of the application shall be costs in the cause.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 16TH DAY OF OCTOBER 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Delivered in the presence of:

Delivered in the presence of:

N/A for M/s Manani Lilan & Co Advocates for plaintiff.

N/A for defendant who has not entered appearance.