



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L NO. 109 OF 2014

WILLIAM KOTUT.....PLAINTIFF

VS

WILLIAM KIPKURGAT CHEMISTO.....DEFENDANT

(Application for injunction; land having been subject of arbitration during land adjudication; arbitration panel awarding the land to the plaintiff; defendant contending that the plaintiff is not entitled to the land; decision of arbitration board not having been set aside; prima facie case established by plaintiff; application for injunction allowed)

RULING

This suit was commenced through a plaint filed on 3 April 2014. In brief, it is the plaintiff's case that he is the owner of the land described as parcel No. 978 in Upper Cheptebo Adjudication Section. That land appears to have been under adjudication and a dispute as to its ownership was the subject of an arbitration under the Land Adjudication Act. It is the case of the plaintiff that the award was in his favour and therefore he is entitled to the suit land. His complaint is that the defendant has trespassed into the suit land. He filed a criminal case against the defendant but the same was not successful with the court holding that the dispute was best settled by a civil suit. That is the reason that the plaintiff has come to this court. In the suit, he wants an order of permanent injunction against the defendant.

Simultaneously with the plaint, the plaintiff filed an application for injunction seeking to bar the defendant from interfering with the suit land pending hearing and determination of the suit. That application is the subject of this ruling.

The defendant filed a response to the application. He has averred that he is not a trespasser on the suit land but has been on it from the year 1987 until the year 2012 when the plaintiff started trespassing into it. He has stated that he has been on the land for a period of 27 years uninterrupted. He has averred that the plaintiff is not the registered owner of the said land. It is his position that it is actually the plaintiff who is the trespasser. He has stated that the land has been with their (defendant's) family and that it is not true that their family surrendered it to the family of the plaintiff.

It was argued by counsel for the defendant that no documentation has been tabled to show that the plaintiff is the registered owner of the suit land. It was also argued that the plaintiff has no capacity to bring this suit on behalf of the estate of his late father.

It is with the above rival positions that I need to determine this application.

It will be observed that while the land was in the process of adjudication, a dispute arose over who is entitled to own the said land. This dispute went before the Land Adjudication and Settlement Arbitration

Board. The matter was heard as Arbitration Board Case No. 26 of 2012 of the Upper Cheptebo Adjudication Section. The Arbitration Board in a ruling delivered on 3 May 2012, held that it is the plaintiff who should be awarded the land. I have not been shown anything by the defendant which has set aside that determination. It follows therefore that in so far as the adjudication of the suit land is concerned, the same has been adjudicated to the plaintiff and not the defendant. It cannot be argued that the plaintiff cannot get an injunction because he has not demonstrated a title deed. Title deeds are yet to be processed and the defendant cannot benefit from this argument. He himself has no title that he has displayed. I have also not seen anything to demonstrate that the plaintiff has filed this suit on behalf of his late father. From what I could gather, the land was adjudicated to the plaintiff and he was the party before the Arbitration Board.

In my view, the plaintiff has laid out a prima facie case with a probability of success, that he is the person rightfully entitled to use and occupation of the suit land. This flows from the decision of the Arbitration Board.

I therefore allow the application for injunction. I hereby restrain the defendant and/or his servants/agents from entering, being upon, occupying, ploughing, utilizing, or in any other way interfering with the land described as Parcel No. 978 Upper Cheptebo Adjudication Section, until the hearing and determination of this suit.

The 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:

Mr. S.M. Mathai holding brief for Mr. Cheptarus for plaintiff/applicant.

Miss Masai holding brief for M/s Chepseba Lagat for defendant/respondent.