

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L 299 OF 2013

KIPTURGO AMDANY.....PLAINTIFF

VS

JOHANA SIRMA CHEBURET.....DEFENDANT

RULING

Before me is an application dated 27 May 2013 filed by the plaintiff. It is an application for injunction brought under the provisions of Order 40 Rules 1,2 and 3. The plaintiff has sought orders to have the defendant restrained by way of an interlocutory injunction from trespassing, interfering or dealing in any way with the land parcel described as Plot No. 2071 Kapkoiwo Adjudication Section. The application is supported by the affidavit of the plaintiff. The defendant despite being served has not entered any appearance to this suit and has not filed any material to oppose the application by the plaintiff.

Although the application has not been opposed by the defendant, this does not mean that I must automatically allow the same. This is an application for injunction and I need to be satisfied that the principles laid out in the case of *Giella v Cassman Brown (1973) EA 358* have been met. First I need to be satisfied that the the applicant has demonstrated 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.

The case of the plaintiff is set out in his plaint and is elaborated in the supporting affidavit to this application. It is his case that he is the owner of the land described as Plot No. 2071 Kapkoiwo Adjudication Section measuring about fourty acres. He has averred that the defendant has entered the suit land yet he has no proprietary interest in the same. He has stated that the defendant lives about 5 kilometers away from the land and has without any right encroached into about 1.5 acres of the suit land. The plaintiff has stated that the adjudication work has been finalized and all that he is waiting for is the issuance of title deed. Annexed to his affidavit is a letter from the District Land Adjudication and Settlement Officer, Baringo land adjudication area which confirms that the Plot No. 2071 of Kapkoiwo Adjudication Section is registered in the name of the plaintiff.

The material before me speaks for itself. I have no reason to doubt that the plaintiff is the owner of the suit land especially given the letter of the land adjudication officer. It appears to me as if the adjudication register has been closed in accordance with Section 27 of the Land Adjudication Act, CAP 284, and therefore the plaintiff is entitled to file suit to protect his proprietary interests. The defendant has not filed anything to demonstrate that he has any rights over the suit land. In absence of this, I find that the plaintiff has demonstrated a prima facie case with a probability of success. I therefore allow this application for injunction and order the defendant restrained from entering into, remaining upon, ploughing, building any structure or in any other way interfere with the land Plot No. 2071 Kapkoiwo Adjudication Section.

The costs of this application shall be costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 9TH DAY OF JULY 2013

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Read in open Court

In the Presence of:-

Mr. Tarus of Ms Tarus & Co Advocates for the Plaintiff/applicant

N/A for the defendant/respondent who has not entered appearance