



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L 787 OF 2012

Formerly HCC 213 of 2011

DAUDI KIPTUGEN.....PLAINTIFF

VS

COMMISSIONER OF LANDS & 4 OTHERS.....DEFENDANT

RULING

The application before me is an application dated 1st August 2013 filed by the 4th defendant. The applicants are seeking orders to have the plaintiff restrained from trespassing, getting in, remaining in, selling, transferring, dealing, or in any other way interfering with the 4th defendant's possession of the land parcel Eldoret Municipality Block 7/154 which is the suit land. The application is vehemently opposed by the plaintiff who has sworn a replying affidavit.

This suit herein was commenced in 2011. It is the plaintiff's case that he is the rightful owner of the suit land and he has a Certificate of Lease to the said land. His complaint is that the 1st, 2nd, and 5th defendants have issued another lease to the 4th defendant. It is his case that the lease to the 4th defendant was issued illegally.

Upon filing suit, the plaintiff filed an application to have the defendants restrained from dealing with the property. The parties by a consent recorded on 11th July 2012, agreed that the status quo be maintained. In this application, the 4th defendant has averred that the plaintiff entered the suit land and demolished all structures therein and purported to fence it off. It is for that reason that it wants the plaintiff barred from dealing or entering the property.

In his replying affidavit, the plaintiff has averred that he has always been in possession of the property and that he demolished the structures after receiving a directive to do so from the County of Uasin Gishu. He has asserted that he is the rightful owner of the suit land and that by virtue thereof, the law grants him all rights and privileges to use, abuse and waste the said property, and that this court has no jurisdiction to restrain him from using the said land. He has stated that the documents of title relied upon by the 4th defendant are not recognized by law.

I have considered the application, and in my view, I need not make a long ruling on it. This suit is scheduled for hearing on 14 November 2013. The parties had agreed to maintain the status quo pending hearing of the suit. It may very well be that by demolishing the structures in the suit land, the plaintiff went against the status quo, and I think, the 4th defendant was entitled to complain.

The suit land is under litigation, and it is for this court to determine who is its rightful owner. The title of the plaintiff is also in issue in these proceedings. The plaintiff cannot be heard to say that this court

cannot issue an order of injunction against him because he believes that he is the rightful owner of the suit land. This court can issue order of injunctions and the plaintiff must obey such orders of injunction irrespective of his views about the case of the defendant. The plaintiff must understand that the suit land is under litigation. This court has a duty to issue interim orders to preserve the subject matter of litigation.

For the circumstances of this litigation, and so as to resolve this application, I issue the following orders :-

- (a) The plaintiff shall have charge of the suit land pending hearing and determination of this suit for purposes only of preserving the suit land and keeping the suit land safe and secure.
- (b) The plaintiff shall not develop or utilize the suit land until the final determination of this suit.
- (c) No party should sell or in any other way deal with the suit land and I hereby issue an order of inhibition, inhibiting the entry of any disposition on the register of the suit land.

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

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 3RD DAY OF OCTOBER 2013

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Read in open Court

In the Presence of:-

Mr. J.K. Korir present for the Plaintiff

Mr. P.K. Komen present for the 4th defendant

N/A for state Law office for the 1st, 2nd, 3rd & 5th defendants