

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L 494 OF 2013

GEDION TERER.....PLAINTIFF

VS

ABRAHAM KIPRUTO CHUMO.....DEFENDANT

(Application to have an application heard in absence of defendant ordered to be heard afresh; defendant alleging that he was never served with a hearing date for the application; no response by plaintiff; application allowed)

R U L I N G

This is an application filed by the defendant seeking to have the orders issued pursuant to an application dated 28th October 2013 suspended and the said application be heard afresh inter-partes. The application dated 28 October 2013 was an application for injunction that was filed by the plaintiff. That application had been filed under certificate of urgency. The said application first came before the judge on 29 October 2013 when it was certified urgent but no interim orders were granted. Only a date for inter-partes hearing was given which date was 12 November 2013. On the said date, only the counsel for the plaintiff/applicant was present. There was an affidavit of service on record, which showed that the defendant had been served on 30th October 2013. No response had been filed by the defendant. I therefore allowed counsel for the plaintiff to proceed. I heard Mr. D.K. Korir for the plaintiff and reserved the ruling for 21st November 2013. I delivered the ruling as scheduled, and I granted the injunction.

That seems to have prompted the defendant to file this application. The defendant admits having been served with the application dated 28 October 2013, but has averred that what was served to him did not have the inter-partes date. He has also denied that he was served with the order which contained the inter-partes date.

The case of the plaintiff as pleaded is that he purchased the suit land from the defendant and moved into possession. According to the plaintiff, what prompted him to file suit was that the defendant re-entered the premises and locked it up. The defendant in this application has contended that the plaintiff got himself registered by way of fraud and that he has a good defence to the plaintiff's suit. He has also alluded to a former suit, being Eldoret CMCC No. 510 of 2011, which is pending and which is a replica of this matter.

This application was filed under certificate of urgency with a request for stay orders but I only certified it as urgent and granted a date inter-partes. At the inter-partes stage, only the defendant's counsel appeared. No reply was ever filed by the plaintiff.

I have considered the application and I am constrained to allow it. The allegation by the defendant that he was never served with a date for the inter-partes hearing of the application dated 28 October 2013 has not been controverted. It could very well be that he was not served with any document that gave him notice of the hearing of the application. I think the defendant deserves to be heard on the application of 28 October 2013.

I therefore vacate the orders of injunction that I had issued on 21st November 2013. I direct that the application dated 28 October 2013 be re-listed for inter-partes hearing. In the meantime, the *status quo ante* be preserved.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 28TH DAY OF NOVEMBER 2013

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Read in open Court

In the Presence of:-

Mr. R.K. Limo for the defendant/applicant.

N/A for M/s D.K. Korir for plaintiff/respondent.