

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 for injunction; plaintiff having purchased suit land from the defendant; plaintiff now registered owner; defendant interfering with suit land; no papers filed by defendant to demonstrate any right over the land; injunction granted)

RULING

Before me is an application for injunction filed by the plaintiff and brought inter alia under the provisions of Order 40 Rules 1 and 3 of the Civil Procedure Rules. The plaintiff wants the defendant restrained from encroaching, sub-dividing, selling, developing, running the premises therein or in any other way interfere with the land parcel Nandi/Ndulele/1046 (the suit land), pending the hearing and determination of this suit. The grounds upon which the application is based, include the reasons that the plaintiff is the registered owner of the suit land having purchased it from the defendant; that on or about September 2013, the defendant encroached onto the said land and locked the premises therein without any colour of right; and that unless the defendant is restrained through an injunction, the plaintiff stands to suffer irreparable loss.

The application was served upon the defendant but the defendant did not file any response to the application. Indeed, the defendant has not entered appearance to this suit, despite being served with summons. The only material that I have is therefore that provided by the plaintiff.

This suit was commenced by way of plaint. In the plaint, the plaintiff has pleaded that he purchased the suit land from the defendant through an agreement of 24th August 2009. He paid the full consideration, entered the suit land and made extensive developments. He otherwise enjoyed full proprietary rights until the defendant re-entered the suit land and locked the premises therein. This action deprived the plaintiff access to and possession of his land. The plaintiff has also pleaded that the defendant has caused a restriction to be entered into the register of the suit land. He has further pleaded that despite asking the defendant to surrender the premises, the defendant has refused to do so and has also refused to withdraw the restriction. In his prayers, the plaintiff wants a declaration that he is the lawful owner of the suit land; a permanent injunction restraining the defendant from the suit land; a declaration that the restriction in the register is unlawful and an order lifting it; mesne profits; costs and interest.

In every application for injunction, the applicant, in order to succeed, needs to demonstrate a prima facie case with a probability of success. If the court is in doubt, it will determine the matter on a balance of convenience, always keeping in mind that an injunction will not normally be granted unless damages are an inadequate remedy. These were the principles laid down in the case of ***Giella v Cassman Brown (1973) EA 358***.

The plaintiff's case as can be seen is that he bought the suit land and he is now the registered owner. The plaintiff annexed a copy of the title deed and official search of the suit land. The same show that he became registered as proprietor on 24th August 2009. I have seen a restriction registered in the register of the suit land by the defendant claiming a beneficiary interest. Since the defendant has not responded to this application, I cannot tell the nature of interest that he claims. I think in the circumstances, the plaintiff has demonstrated prima facie, that he is entitled to possession of the suit land since he is the registered

proprietor. The defendant has not justified his actions of entering the suit land and locking up the premises therein. In my view, this is an appropriate case for the issuance of an order of injunction. I therefore allow this application. I issue an injunction restraining the defendant from entering, being upon, or in any other way interfere with the suit premises pending hearing and determination of this suit. The costs of the application shall be costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 21ST DAY OF NOVEMBER 2013

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Read in open Court

In the Presence of:-

H.K. Ngeno present for the plaintiff/applicant

Defendant – absent.