



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E&L 492 OF 2013**

**BONIFACE ODERO SIMANI.....PLAINTIFF**

**VS**

**HERMAN SHIBIT.....DEFENDANT**

**RULING**

This is an application for injunction in which the plaintiff wishes to have the defendant restrained from interfering with the land parcel Eldoret Municipality Block 21 (Kingongo)/4698 (the suit land) pending the hearing and determination of this suit. The grounds upon which the application is founded are that the plaintiff is the registered owner of the suit land; that the defendant has interfered with the said property by inter alia damaging the perimeter fence, altering the beacons, and blocking access by the plaintiff; and that unless restrained, the defendant will continue so interfering which will cause the plaintiff irreparable loss.

The defendant despite being served with the suit papers and the application, has neither filed appearance nor a response to the application.

This suit was instituted by way of plaint in which the plaintiff has pleaded that on or about 28th April 2009, the defendant sold to him the suit land and a transfer effected to him. He has averred that he has been in occupation since and has developed a private school and a church. However, in June 2012, the defendant trespassed into the land, destroyed the gate, altered the boundaries and constructed temporary structures, thus interfering with his occupation. The main prayer in the plaint is for a permanent injunction to restrain the defendant from further interference with the suit land.

I have considered the application. As I stated earlier, the defendant has not filed any response to the application. To the supporting affidavit, the plaintiff annexed a copy of the title to the suit land which shows that the plaintiff is the registered owner, having become registered on 14th June 2012. I think the plaintiff has demonstrated a prima facie case with a probability of success. There is also no question that if the defendant is to continue interfering with the suit land, the plaintiff stands to suffer irreparable loss. Moreover, the balance of convenience tilts towards having the property in the hands of the plaintiff, as registered proprietor, pending hearing and determination of the suit. If the defendant has any legitimate claim over the suit land, then he is free to lodge the same for consideration. But pending the hearing of the matter, he ought to keep off the suit land.

In the premises, I allow the application for injunction and restrain the defendant and/or his servants/agents from any further interference with the suit land pending the hearing and determination of this suit. Costs to be costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 20TH DAY OF NOVEMBER 2013

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

***Read in open Court***

***In the Presence of:-***

***Mr. G. Cheruiyot for the plaintiff.***

***N/A for defendant.***