



Catholic Diocese of Eldoret Registered Trustees v Sum (Environment & Land Case E004 of 2022) [2024] KEELC 4105 (KLR) (9 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4105 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E004 OF 2022**

EO OBAGA, J

MAY 9, 2024

BETWEEN

CATHOLIC DIOCESE OF ELDORET REGISTERED TRUSTEES PLAINTIFF

AND

VERONICA CHEPSAT SUM RESPONDENT

RULING

1. This is a ruling in respect of a notice of motion dated 8.4.2024. The Plaintiff/Applicant sought injunctive orders, orders of inhibition, orders prohibiting the firm of David Momanyi Gichana & Co. Advocates from completing a lease agreement the firm was preparing on behalf of the Defendant/Respondent and Isaiah Kibet Chumba, Supervision of implementation of the order by OCS Langas and costs among other orders.
2. The Applicant contends that on 23.4.1997, it entered into a sale agreement with the Respondent in respect of a portion of LR No 12392 which was 15 acres. The Applicant purchased 5 acres. The process of subdivision was in progress and it was agreed that the Applicant would have a portion of 5 acres transferred to it upon subdivision.
3. When the process of subdivision was completed the portion which the Applicant was given became LR No Pioneer/Racecourse Block 2 (Kapmalel) 9 measuring 2.023 hectares (suit property). The Applicant has been on the suit property since 1997 but the title is in the name of the Respondent. On 25.2.2022, the Applicant filed an originating summons against the Respondent in which it claimed that it had acquired the suit property by way of adverse possession.
4. On 26.1.2024 the Respondent and one Isaiah Kibet Chumba entered into a lease agreement in which the Respondent leased the suit property and two other properties to Isaiah Kibet Chumba. The said Isaiah Kibet Chumba attempted to plough the suit property but he was repulsed by members of the



public who knew that the suit property belonged to the Applicant. It is on this basis that the Applicant is seeking the orders in the application.

5. The Applicant contends that if an injunction and inhibition orders are not granted, the Respondent might evict the Applicant and even sell the suit property before the case is concluded. The Applicant further states that the police from Langas have indicated that they may not help the Applicant.
6. The Respondent has opposed the Applicant's application based on a replying affidavit sworn on 12.4.2024. The Respondent states that she purchased the suit property from one Selina Jebitok Kimalel and thereafter obtained title on 18.3.2009. The Applicant made an offer to purchase the suit property. An agreement was entered into between the Applicant and the Respondent. The purchase price was Kshs 3,000,000/= which was supposed to be paid in full before transfer. The Respondent states that the Applicant only paid Kshs 1,000,000/= and is yet to pay the balance.
7. The Respondent states that she is the one who has been in possession and occasionally leases the land to her sister. She denies that the Applicant has been planting Boma Rhodes for sale.
8. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the oral submissions by the parties. The only issues for determination are firstly, whether the Applicant has shown that it has grounds for grant of injunctive orders and secondly whether an order for inhibition should be granted.
9. There is no contention that there was a sale agreement between the Applicant and the Respondent. For an injunction to issue, an applicant has to show that he has a prima facie case with probability of success. Secondly, that if an injunction is not granted, the Applicant will suffer loss which will not be compensated in damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.
10. I have looked at the material placed before me. There is a sale agreement dated 23.4.1997. There is also a letter from the area chief confirming that it is the Applicant who has been in possession. A report of the trespass was made to Langas Police station. Considering the materials placed before me, I find that the Applicant has demonstrated that it has a prima facie case with a probability of success. One cannot get land in same area where he has been for over two decades. No amount of damages will restore the Applicant to the position it has enjoyed for the over two decades.
11. On the second issue, the Respondent has shown by her actions that she is intent on dealing with the suit property as she wishes. To prevent any improper dealing with the suit property, it is important that an order of inhibition be granted.
12. Consequently, I allow the Applicant's application in terms of prayers (b) (c) and (h) of the Notice of motion dated 8.4.2024.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 9TH DAY OF MAY, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Rotich for M/s Chesoo for Applicant.

Mr. Gichana for Respondent.

Court Assistant –Laban



E. O. OBAGA
JUDGE
9TH MAY, 2024

