



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI LAW COURTS**

**ELC NO. 1280 OF 2013**

**IN THE MATTER OF : LAND PARCEL L.R NO.209/12132, GRANT**

**: L.R NO.1870/IX/54 – WESTLANDS**

**=AND=**

**IN THE MATTER OF : SECTION 38 OF THE LIMITATIONS OF**

**: ACTIONS ACT OF THE LAW OF KENYA**

**=AND =**

**IN THE MATTER OF : APPLICATION FOR A VESTING ORDER**

**=BETWEEN=**

**CHARLES MUHORO KARIUKI.....PLAINTIFF**

**=VERSUS=**

**SATYA INVESTMENT LIMITED & 4 OTHERS**

*(Being sued as personal representative and Administrators of the*

**Estate of J K MBUGUA Deceased).....2<sup>nd</sup> DEFENDANT**

**RULING**

1. This is a ruling in respect of a notice of motion dated 24<sup>th</sup> October 2013 which seeks the following orders:-

**1) Spent**

**2) Spent**

**3) That pending the hearing and determination of this suit this honourable court be pleased to issue an order of temporary injunction restraining the Defendants whether by themselves, their servants, agents employees and/or whomsoever claiming through or under them from dealing with, alienating, selling, charging, transferring or in any manner interfering with the Plaintiff's peaceful and quiet possession and occupation of all that parcel of land known as L.R No.209/12132, Grant No. I.R 62591 formerly L.R No. 1870/IX/54-Westlands.**

**4) That costs of this Application be borne by the Defendants in any event.**

2. The Plaintiff filed an originating summons seeking to be declared as having acquired LR No.209/12132 IR No.62591 formerly LR No.1870/IX/54 Westlands (suit property) by adverse possession. The Plaintiff contemporaneously filed this application. The Plaintiff/Applicant contends that he has been in the suit property after its owner an unknown European vacated it. He put up a shop which he has

sublet as a hardware shop and stalls which he has sublet to clothes dealers.

3. The Applicant states that he has been aware of ownership wrangles over the same property between the two Respondents. The Applicant states that in October 2013, an auctioneer who was allegedly sent by the Respondents visited the suit property and ordered him to vacate the property. It is on this basis that he filed this application.

4. The 1<sup>st</sup> Respondent opposed the Applicant's application based on a replying affidavit sworn on 3<sup>rd</sup> December 2013 and a supplementary affidavit sworn on 20<sup>th</sup> March 2014. The 1<sup>st</sup> Respondent contends that the Applicant is a stooge of the 2<sup>nd</sup> Respondent who has come up after one J K Mbugua's claim to the suit property was defeated and that the Applicant is now out to delay the execution of the Court of Appeal Judgement in favour of the 1<sup>st</sup> Respondent.

5. The 1<sup>st</sup> Respondent further contends that the Applicant did not raise any claim when it was fighting its battles with the late J K Mbugua . The dispute over the suit property went to the court of Appeal which found that it belonged to the 1<sup>st</sup> Respondent. An attempt by the administrators of the estate of J K Mbugua to seek leave to file an appeal to the Supreme Court was rejected. The Family of J.K Mbugua moved out after an eviction notice was issued and were served by an Auctioneer. The 1<sup>st</sup> Respondent therefore argues that the Applicant has no prima facie case to warrant issuance of injunctive orders.

6. The 2<sup>nd</sup> Respondent swore a replying affidavit through Florence Wairimu Mbugua one of the administrators of the Estate of J.K Mbugua who stated that she is aware that the Applicant has been in the suit property but that she always thought that he was an employee of her late husband. This deponent stated that she has never seen the 1<sup>st</sup> Respondent's representatives in the suit property.

7. I have considered the Applicant's application as well as the opposition thereto by the 1<sup>st</sup> Respondent. The 2<sup>nd</sup> Respondent seems to support the Applicant's case. I have also considered the submissions by the Applicant and the 1<sup>st</sup> Respondent. The only issue for determination is whether the Applicant has demonstrated that he has a prima facie case to warrant issuance of an injunction.

8. To begin with the Applicant has not come to court with clean hands. The Applicant is clearly working in cahoots with the 2<sup>nd</sup> Respondent. When the 1<sup>st</sup> Respondent was battling with the late J K Mbugua, the position was that J K Mbugua was in exclusive possession of the suit property. There was no mention of any other party who was in possession. After the court battle had been won by the 1<sup>st</sup> Respondent, the Applicant has now emerged to claim that he has been in possession for over 15 years. In his blatant claim to possession, he is being supported by the 2<sup>nd</sup> Respondent who claims that he was in possession but that they thought he was an employee of J K Mbugua.

9. The Applicant himself has claimed that he was occupying the suit property whereas the family of J K Mbugua were occupying an adjacent plot. This is a big contradiction. The family of J K Mbugua were evicted. There was no one else who remained in the suit property. The Applicant's claim of being in possession does not therefore hold any water. I find that the Applicant's application lacks merit. The same is hereby dismissed with costs to the Respondents.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 23<sup>rd</sup> day of January 2020.**

**E.O.OBAGA**

**JUDGE**

In the presence of:

M/S Gazanzule for Mr. Mbaabu for plaintiff

M/S Mburu for Mr. Nyawara for 1<sup>st</sup> defendant

Court Assistant: Hilda

**E.O. OBAGA**

**JUDGE**