



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 257 of 2015

NELSON KAIMENYI KIRUGU & 17 OTHERS.....PLAINTIFFS

VERSUS

EMBAKASI RANCHING COMPANY LIMITED.....DEFENDANT

RULING

1. This is a ruling in respect of a Notice of Motion dated 31.1.2017 in which the defendant/applicant seeks orders of removal of caveats registered against the titles listed in prayer (b) of the Motion . The applicant was the registered owner LR NO. 12715/549 (IR 45528) which has since been subdivided into the plots listed in prayer (b).
2. The applicant contends that prior to the subdivisions of the mother title, the respondents had encroached on to the suit property which was 5 acres . The applicant moved to court and obtained orders of eviction against the trespassers who were evicted in accordance with the orders of the court.
3. The respondents thereafter moved to court and filed the present suit in which they are claiming that they have acquired the suit property by adverse possession. The respondents filed an application for injunctive orders which was not granted as that application has never been heard. The respondents then moved to the Land Registrar's Office where they caused caveats to be registered against all the subdivisions arising from the main title.
4. The applicant contends that it has entered into sale agreements with third parties for purchase of the various subdivisions and that it is unable to carry on with the transactions as the caveats are in place. The applicant therefore contends that as the respondents had been evicted from the property in dispute, before they came to file this suit, their claim for adverse possession has no basis and the caveats should not be in place.
5. The respondents have opposed the applicant's application based on a replying affidavit sworn on 22.2.2017. The respondents contend that there has never been any court order evicting them from this suit property; that this is the only suit which is pending between them and the applicant; that the deponent of the affidavit is one of the shareholders of the applicant which is a public company and that she is not aware of any resolution by the applicant to sell the suit property.
6. The respondents also claim that the persons who are purporting to be directors of the applicant are not directors and that a property whose disputes is before court cannot be sold during the pendency of the suit.

7. I have carefully considered the applicant's application as well as the opposition thereto by the respondents. I have also considered the submissions filed by the parties herein. The only issue for determination is whether the caveats which are in place should be removed. Before this application could be determined, the applicant requested that the Deputy Registrar of this Court do visit the suit property and file a report as to whether there was occupation by the respondents as claimed. The Deputy Registrar visited the suit property and filed a report which included photographs taken on what was on the ground.

8. Though the respondents are contending that there was no court order evicting them, I can see from the applicant's further affidavit filed on 27.4.2017 that the applicant had filed Nairobi ELC case No.41 of 2015 against one Peter Ndungu Muhuri and George Muchiri Muhuri. The applicant obtained a mandatory injunction against the two including their agents or servants ordering demolition of any structures on the property and removal of materials deposited on the same. This order was given on 23.3.2015.

9. Though the respondents were not mentioned in that suit, it is clear that all those who were on the property were evicted. The respondents moved to court after eviction orders had been given and filed the present suit claiming adverse possession. The report of the Deputy Registrar filed in court on 11.11.2017 shows plots fenced with barbed wire and some iron sheet structures and newly built boundary walls. These structures could not have been built in the 1990's as the respondents are claiming.

10. A caveat or restriction acts as an injunction to protect the property which is subject to a dispute. Like an injunction, the caveator has to demonstrate that there is a basis for it to be in place. In the instant case without appearing to pre-judge the case herein, I do not see the basis for the caveats to remain in place. The applicant had obtained orders to evict all those who were on the property. According to the applicant the court order was implemented. If the respondents were evicted before filing any claim for adverse possession, I do not see how they will file a suit after eviction and claim adverse possession. I find that the caveats in place have no basis and they should be removed. I therefore allow the applicant's notice of motion dated 31.1.2017 in terms of prayer (b) and (c).

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **30th** day of **January ,2018**.

E.O.OBAGA

JUDGE

In the absence of;-

Mr Ndirangu for Mr Gichohi for Plaintiff/Respondent

Court Assistant : Hilda

E.O.OBAGA

JUDGE