



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 23 OF 2016

DAVID KIPKOECH KOGOPLAINTIFF

VERSUS

ESTHER CHESAINA BEDFORD PIM }DEFENDANT

RULING

1. The Applicant is a son of the Respondent . The Respondent is the registered owner of **LR No 6150/1** which is about **33.5 acres** (suitland). The Applicant filed an originating summons in which he seeks to be registered as owner of the suit land in place of the Respondent as he has acquired the same by adverse possession. The Applicant at the same time filed a Notice of motion in which he seeks an injunction against the Respondent restraining her from entering into the suit land or interfering with the same in any manner. He also prays for an order inhibiting any dealings on the suit land.

2. The Applicant contends that he has been utilising the entire suitland or over 12 years and that as such, he has acquired the same by way of adverse possession. He therefore prays that he should be registered as owner of the suitland in place of the Respondent.

3. The Respondent has opposed the application based on the replying affidavit filed on 30/3/2016. The Respondent contends that the Applicant is her son. That he has been staying and utilising the suitland with her permission by virtue of him being her son. That in 2013, she embarked, on subdivision of her properties to give to her children including the Applicant. That the Applicant was shown his portion but he still continued to cultivate **131 acres** in another parcel. This forced her to file **Kitale Environment Land Court Case No. 25 of 2014** against the Applicant.

4. The case was later compromised when the Applicant was given **70 acres** out of the suitland as well as **LR No 6133** which also belonged to the Respondent. The Respondent therefore argues that the filing of this suit is not only misconceived but is also mischievous and is otherwise res judicata. The Respondent contends that the Applicant's suit does not disclose any cause of action and as such no orders can issue as prayed by the Applicant.

5. I have considered the Applicant's application as well as the opposition thereto by the Respondent. This is an application for injunction. In this kind of applications, an Applicant is supposed to demonstrate that first, he has a prima facie case with a probability of success. Secondly, an injunction will not normally be given unless otherwise the Applicant might 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. See, ***Giella - Vs- Cassaman Brown Co. Ltd [1973] EA 358.***

6. In the instant case, the Applicant is not disputing that he is a son to the Respondent. He is also not disputing that the Respondent had filed a case against him which case was comprised whereby he was

given 70 acres out of the suitland and **LR No. 6133**. The Applicant's claim is premised on the doctrine of adverse possession. In a claim for adverse possession, one cannot be entitled to land if he has been on the land with the permission of the registered owner or if he has acknowledged title of the registered owner.

7. In this case, the Applicant has been on the suit land with permission of his mother who is the Respondent. When the Respondent filed a suit against the Applicant who had cultivated land other than where he had been shown, the Respondent filed a suit in court. This is **Environment and Land Case No. 25 of 2014** between the Respondent and the Applicant. This suit was compromised on 8/10/2014 whereby the Applicant was given 70 acres out of the suitland as well as **LR No 6133**. The import of this compromise is that the Applicant acknowledged the title of the true owner. He cannot therefore turn round and file a claim for adverse possession. The Applicant has no case which has chances of success against the Respondent. It therefore follows that no injunction can issue in the circumstances.

8. The Applicant has already been given **70 acres** out of the suitland as well as **LR No 6133**. Even if he were to succeed in his claim which cannot be the case, he will be compensated by damages. It will not be difficult to compute what he would have lost. I have no doubt in my mind as to the merits of the application as to call for a decision based on a balance of convenience.

9. The Applicant is trying to fault the compromise which was reached in **Kitale Environment and Land Case No 25 of 2014**. His argument that the consent is invalid has no basis. The consent was clear that he was to meet the costs for registration of the portion he was given. There is no evidence that he has tried to meet the costs. I find that this application lacks merit. The same is hereby dismissed with costs to the Respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this 23rd day of May 2016.

E. OBAGA

JUDGE

In the presence of Mr Yano for the Respondent and Applicant in person

Court clerk: Isabellah

E. OBAGA

JUDGE

23/5/16