



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC ORIGINATING SUMMONS 02 OF 2020

IN THE MATTER OF THE ADVERSE POSSESSION OVER L.R. NTIMA/NTAKIRA/1910

AND

IN THE MATTER OF THE LAND ACT NO. 6 OF 2013 AND IN THE LAND REGISTRATION ACT NO. 3 OF 2012

PAUL RIUNGU.....PLAINTIFF

VERSUS

HENRY MURIIRA KIRUBIA1ST DEFENDANT

SOLOMON MPEKETHU2ND DEFENDANT

RULING

1. This ruling relates to two applications dated 15.1.2020 and 17.2.2020.
2. In the 1st application, the plaintiff seeks inhibition and temporary orders of injunction barring and restraining the defendants from evicting, selling, leasing, charging or in any other way whatsoever interfering with the applicant's peaceful and quiet possession and development over **Parcel No. Ntima/Ntakira/1910** hereinafter the suit land, pending hearing and determination of this suit. The application is supported by an affidavit sworn on even date by the plaintiff.
3. The grounds are the land is ancestral, the plaintiff has been in occupation for over 53 years hence acquiring beneficial interest and unless orders are granted he is likely to be evicted despite extensive developments thereon.
4. Further it is averred though the suit land is registered under the defendants' names it is the plaintiff who is in actual occupation and that there was a previous suit by the defendants in 2018 seeking his eviction.
5. In the 2nd application dated 17.2.2020 the applicant seeks for the transfer of **Meru CMC ELC No. 61 of 2018** for consolidation with this suit. The application is supported by the plaintiff's affidavit sworn on 17.2.2020.
6. The grounds for the application are that the two suits involve same parties, over the same parcel of land and hence raise common or substantially similar issues/facts hence if consolidated, it will not only save the court's time/costs but shall also be in the best interests of justice.
7. The respondents oppose the two applications through replying affidavits sworn by the 1st respondent on 30.6.2021. The grounds are that the suit land bears their names unlike the plaintiff, it would be prejudicial to issue the orders sought; the plaintiff is out to frustrate them; there is no merits in ordering the transfer and consolidation of the suits and that there would be great prejudice if the suit in the lower court is transferred.
8. With leave, parties agreed to compromise the two applications through written submissions dated 9.11.2021 and 11.11.2021 respectively.
9. The plaintiff submits there is likelihood of the defendants alienating the property to a third party so as to defeat the claim hence pray for inhibition orders based on **Section 68 of the Land Registration Act** and the case of **Millicent Wairimu Kathigi –vs- Peter Kimani [2021] eKLR.**
10. As regards temporary injunction the plaintiff submits he has demonstrated a legitimate interest or right worthy protecting in line with the holding in **Mrao Ltd –vs- First American Bank of Kenya Ltd & 2 Others [2003] eKLR, Hutching Biemer Ltd –vs- Barclays Bank of**

Kenya Ltd & Another.

11. On the issue of transfer and consolidation of the two suits, the plaintiff submits he has met the threshold on consolidation as held in **Nyati Security Guard & Services Ltd –vs- Municipal Council of Mombasa [2004] eKLR, Korean United Church of Kenya & 3 Others – vs-Seng Ha Sang [2014] eKLR.**

12. At issue before this court is the originating summons dated 15.1.2020 where the plaintiff seeks under **Section 38** of the **Limitation of Actions Act Cap 22** as read together with **Order 37 Rule 7** of the **Civil Procedure Rules** to be declared to have acquired the suit land through adverse possession. The originating summons is supported by a sworn affidavit on 15.1.2020 wherein the plaintiff says he has been in open and uninterrupted occupation of the suit land for over 12 years hence extinguishing the rights of the defendants.

13. The defendants though served with summons, are yet to file any defence or counterclaim to the suit.

14. In order to be entitled to any temporary orders of injunction the plaintiff has to demonstrate a prima facie case with a probability of success; that he is likely to suffer irreparable loss and damage unless the orders sought are granted and that the balance of convenience tilts in favour of granting the orders sought.

15. The applicant claim that he has been in occupation for over 35 years or thereabouts and no one has ever demanded he vacates the land and unless the orders sought are granted he stands to be evicted from his land.

16. In my considered view the applicant has a legitimate claim which shall be determined through viva voce evidence. The court therefore grants a prayer for inhibition so as to preserve the property for only one year from the date hereof.

17. There is no doubt the defendant has filed a suit **CMCC No. 61 of 2018** for eviction which the plaintiff has defended and lodged a counterclaim for permanent order of injunction pending hearing and determination of the two suits.

18. My view is there is need to preserve the rights of all the parties. The court therefore orders for the maintenance of status quo as at the filing of these two suits for a period of one year.

19. Coming to the issue of the transfer and consolidation of the two suits, there is no dispute the parties are the same, issues are similar and the subject property is the same.

20. For the expeditious disposal of the matter, it is only fair and just that the two be consolidated so as to save time and costs to both the parties and the court.

21. The court allows the application dated 17.2.2020. The two files shall be consolidated with the lead file being **No. 2 of 2020** (Originating Summons).

22. Parties shall file and exchange replies within 45 days and comply with **Order 11** within **60 days** from the date hereof.

23. The matter be mentioned on 21.4.2022 for case conference.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 19TH DAY OF JANUARY, 2022

In presence of:

MUTHONI FOR PLAINTIFF/APPLICANT

GATARI RINGERA ABSENT

COURT CLERK: KANANU

HON. C.K. NZILI

ELC JUDGE