



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 413 of 2018

CATHERINE ALUVISIA OCHOKIPLAINTIFF/RESPONDENT

VERSUS

ROSELYN DOLA OUKO1ST DEFENDANT/APPLICANT

AARON TAFARI OUKO2ND DEFENDANT/APPLICANT

DAVID SCOTT OUKO3RD DEFENDANT/APPLICANT

RULING

1. Before me is a notice of motion application dated 23.8.2021 in which the Defendants are seeking the following orders:

1. spent

2. That pending the hearing and determination of this application the Respondent, its agents, servants, proxies and or any other person claiming through him be restrained by an order of injunction from interfering, working, developing erecting on and/or developing the suit land in dispute measuring 5 acres or thereabouts situated on the property known as LR. No. 3589/6

3. That upon prayer (2) above being granted the interim order be deem to remain in force until the hearing and determination of this application

4. That the costs of this application be provided for.

2. The Applicants contend they are the administrators of the estate of their late father JASON ATINDA OUKO who is the registered owner of Parcel 3589/6, but the Respondent has been working on the suit parcel without their consent which actions are unlawful and unjust.

3. Vide the supporting affidavit of one AARON TAFARI OUKO (2nd Defendant) the Applicants contend that their father had entered into a land sale agreement with one James Ochoki Ondima on 10.3.1978 where 5 acres out of the suit parcel was to be sold, of which the buyer was allowed to take possession after paying part of the purchase price of Kshs 90,000 but the purchaser did not honour the balance.

4. In the replying affidavit of the Respondent dated 19.10.2021, it is averred that the Respondent/Plaintiff's husband purchased the suit property from Jason Atinda Ouko as confirmed under paragraph 5 of the supporting affidavit of which the purchase price was fully paid.

5. That the Respondent proceed to develop the 5 acres and has been in occupation of the suit land, thus she did not require consent to occupy the land from the Applicant. The Respondent seeks the dismissal of the suit.

6. I have considered the issues raised herein, in particular, it emerges from paragraph 6 of the affidavit of AARON TAFARI OUKO that the Respondent took possession of the suit property years ago. An order of injunction in such a scenario would only convolute the dispute further.

7. It is not lost to this court that directions were duly taken on 25.1.2021 and the matter is scheduled for hearing in the next term on (16.5.2022)

8. An injunction is a discretionary remedy and in this case, I exercise my discretion in not granting any orders as parties will soon have a chance of ventilating their case during the main trial.

9. The application is dismissed with costs to Plaintiff/Respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF FEBRUARY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

IN THE PRESENCE OF:-

ONYANGO FOR THE APPLICANT

MAINA FOR THE RESPONDENT

COURT ASSISTANT: EDDEL BARASA