



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAI ROBI MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC NO. 56 OF 2012
PHILIP KAMUNYA & 24 OTHERS.....PLAINTIFF/APPLICANT
=VERSUS=
PATWA LIMITED.....DEFENDANTS

RULING

The matter coming up for the determination is the Notice of Motion dated 30th September, 2013 brought by the proposed interested parties brought under **Order 51 Rule 1 and Order 1 Rule 10 of the Civil procedure Rules 2010 and Section 3A of the Civil Procedure Act** seeking for Orders that:

- i. The Interested parties be enjoined in this suit .***
- ii. Costs of this application be provided for.***

The application is supported by the annexed affidavit of **Alfred Juma** and on the grounds stated on the face of the application. These grounds are:-

- a. That the interested applicants have developed, constructed and do reside at the suit land together with their families since 1992 and they do not know the Defendants/Respondents as he is not a resident in the Suitland.***
- b. That the Defendant has threatened to forcefully evict the interested parties together with the Plaintiffs by use of any mean necessary to demolish the interested parties and Plaintiffs siblings and the Defendant has issued a Notice to vacate .***
- c. The intended parties have a prima facie case by virtue of their continuous open uninterrupted and occupation of the suit land.***
- d. The applicants have neither been made parties to this suit prior to the instant application nor have they been served with any pleadings in this matter.***
- e. The applicants stand to suffer irreparable loss unless the prayers sought herein are not granted as once they have been evicted, the suit will be rendered nugatory and substantial loss will result to the applicants ; Further for the interest of equity and justice the orders sought should be granted.***

The Deponent, **Alfred Juma** who had authority from the other applicants averred that they have been in occupation of LR No. 9042/126 , the suit land since 1992 . That they have been in continuous and uninterrupted possession and occupation of the suit land since the time of their entry. It was his contention that he has been advised by his advocate that they have now acquired prescriptive rights by adverse possession having been in occupation of the suit land for over 12 years ; Further that there is a danger that the Defendant will use all means necessary to evict the applicants and their families. He further averred that it is fair and just that they be enjoined in this matter and there interests in the suit land be determined as they are also residents in the suit property.

The application herein is not opposed. Neither the Plaintiffs nor the Defendants filed their Reply to the application nor grounds of opposition.

The applicants canvassed the application by way of written submissions which I have considered. I have also considered the relevant laws.

The application is premised under **Order 1 Rule 10(2) of the Civil Procedure Rules** which provides as follows:-

“ The court may at any stage of the proceedings either upon or without the application of either party and on such terms as may appear to the court to be just, Order that the name of any party joined whether as plaintiff or defendant be struck out and that the name of any person who ought to have been joined , whether as Plaintiff or Defendant or whose presence before court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle a questions involved in the suit be added”.

The applicants have averred that they are occupants of Plot No. 209/9042/126, in which the Plaintiffs herein have instituted a suit against the Defendant. The applicants have further alleged that they have neither been made parties to this suit nor served with any pleadings.

I have considered the pleadings and the annexures thereto and there is no doubt that the applicants are residing on the suit property. The Defendants nor the Plaintiff did not oppose the applicants' application. There is therefore no evidence to the contrary. It is evident that the outcome of this proceeding will substantively affect the interested parties/applicants herein. It is also evident that the applicants have developed and constructed on the suit property.

For the court to make a finding on the issue of whether to join the applicant or not, I have to look at the pleadings and other evidential material. The applicants allege that they have lived on the suit land for long and have rights as equal to that of the Plaintiffs herein. Since there is no evidence to the contrary, the Court find that the applicants have established that they are necessary parties to this suit. Accordingly, the court finds that the applicants Notice of Motion dated 30th September, 2013 has merit. The same is allowed entirely. Costs shall be in the cause.

It is so ordered.

Dated, signed and delivered this **18th day of July, 2014**

L.GACHERU

JUDGE

Court:

Ruling delivered in open court and in the absence of any of the parties.

L.GACHERU

JUDGE