



REPUBLIC OF KENYA

High Court at Nakuru

Civil Suit 126 of 2012

MUSA KIPKOSGEI LABATT.....PLAINTIFF/APPLICANT

VERSUS

LABAN KIPKEBUT BARKON.....DEFENDANT/RESPONDENT

RULING

The applicant from the Ogiek community brought an originating summons together with the instant motion for temporary orders of injunction, claiming that he has acquired NAKURU/SURURU/1873 (the suit property) by adverse possession.

It is the applicant's contention that in 1994 the Government allotted to him the suit land which he had occupied and developed prior to this allotment for some ten years. He was issued with an allotment letter. The applicant has further averred that he was in quiet occupation of the suit property until 2006 when the late Wilson Barkutan Kipkorir, the father of the respondent, began to claim the suit property.

As a result, this dispute was referred to the Land Dispute Tribunal, which determined it in favour of the applicant. Despite this, the respondent's late father accompanied by goons and the OCS descended upon the suit property demolishing the applicant's house and destroying trees.

Apart from a copy of a letter addressed by the District Commissioner in 2006 confirming that the applicant has been living on the suit land since 1994, one Joseph Tuimising, a neighbour and the Village Elder has sworn an affidavit tracing the history of the suit land to 1984 before it was allotted to the applicant; that the applicant has been in continuous occupation since, having occupied it together with other members of the Ogiek community as squatters; that indeed the respondent's father was not part of those who occupied the suit property. It is therefore the applicant's case that the respondent's father illegally and fraudulently obtained the registration of the suit land.

In response, the respondent maintains that his late father is the lawful owner of the suit property, the same having been allocated to him in 1993 and a title deed issued in 2004. That upon being allotted the suit property, the deceased occupied and developed it; that the applicant has never occupied the suit property, except that one Richard Miningwo Kiptui trespassed on the suit property sometimes sin 2002 but was duly evicted after the court in CMCC No.221 of 2006 made an order to that effect; that the award of the Land Dispute Tribunal was not adopted; that from the applicant's own pleading, it is clear he has been in occupation of the suit property for only 6 years.

The respondent has further deposed that in April, 2012, the applicant and others invaded the suit property and destroyed the respondent's property for which he was charged in Nakuru C.M.CR.C.NO.1220/2012.

Finally the respondent has denied that he is the administrator of his late father's estate.

I have carefully considered these arguments as well as the written submissions together with cited authorities filed by counsel for the parties. It is clear from the pleadings that both the applicant and the respondent's father were issued, at more or less the same period with allotment cards. However the applicant's card relates to plot No.95101 while that of the respondent's late father relates to plot No.09951. But somehow, both claim the suit property and were before the tribunal over the suit property.

Both claim to have been in occupation, with the applicant insisting that he had been in occupation for ten years before it was allotted to him in 1994. The respondent for his part maintains that his father occupied the property in 1993. These are truly triable issues which I consider to be suitable for determination at the trial and as such I would have confirmed the interim orders, but for the following reason. No doubt the suit property is registered in the name of Wilson B. Kipkorir, the father of the respondent.

At paragraph 6 of the affidavit in support of the originating summons and that in support of the present application, the applicant has deposed that:

“..... the respondent is the son of WILSON BARKUTAN KIPKORIR who is now deceased (hereinafter, the deceased) and the respondent is now one of the administrators of the deceased's estate.”

(Emphasis supplied)

When used in relation to a deceased person, the word “*administrator*” is a term of art.

According to **Section 3** of the **Law of Succession Act** an administrator means:

“..... a person to whom a grant of letters of administration has been made under this Act.”

In suing the respondent on behalf of the estate of the deceased the applicant had to demonstrate that the former has obtained a grant or representation. That has not been shown.

For that reason, the applicant has failed to disclose a *prima facie* case against the respondent. The application is dismissed with costs.

Dated and Signed at Nakuru this 18th day of January, 2013

**W. OUKO
JUDGE**

Dated, Signed and Delivered at Nakuru this 29th day January, 2013 by Hon. Justice M. J. Anyara Emukule.

JUDGE