



REPUBLIC OF KENYA

High Court at Eldoret

Environmental & Land Case 251 of 2013

KIPKOECH KANGOGO.....PLAINTIFF

VS

CHEBII YEGO.....DEFENDANT

(Application for injunction; principles upon which the court will entertain an application for injunction; plaintiff claiming to be entitled to the suit land by way of adverse possession; no response by the defendant; prima facie evidence demonstrated by the plaintiff; application for injunction allowed)

RULING

1. This ruling is in respect of the Motion dated 16 April 2013 in which the plaintiff seeks to have an order of injunction to restrain the defendant from interfering with the plaintiff's occupation and quiet possession of the land parcel Baringo/Isaas "A"/452 measuring 1.69 Hectares.
2. The principles for the grant of an injunction were laid down in the case of **Giella v Cassman Brown**. First the applicant needs to establish a prima facie case; secondly, an injunction ought not normally be granted where damages can be an adequate remedy and finally, if the court is in doubt, it ought to decide the matter on a balance of convenience.
 1. This suit was commenced by way of Originating Summons brought under the provisions of Order 37 rule 7 of the Civil Procedure Rules, and Section 38 of the Limitation of Actions Act, CAP 22, Laws of Kenya. The plaintiff has in his pleading is seeking orders that he be declared to have acquired title to the land parcel Baringo/Isaas "A"/ 452 by way of adverse possession. He has also asked for orders that he be registered as proprietor of the suit land in place of the defendant who is the current registered proprietor. In addition he has sought orders of permanent injunction to restrain the defendant from evicting him or interfering with his possession of the suit land.
 2. In his supporting affidavit to the Originating Summons, the plaintiff has deponed that he has been on the suit land since the year 1986 and he has built a house, toilet, water tank and planted trees. He has deponed that his possession has been without the permission of the defendant and that the same has been continuous, uninterrupted , quiet and not forceful.
 3. Contemporaneously to the filing of the Originating Summons, the plaintiff filed this application for injunction. In his supporting affidavit, he has deponed that on 10/4/2013, the defendant in the company of his children threatened to demolish his house and evict him from the suit land. He has also deponed that the defendant has caused him to be arrested and prosecuted from trespass. He has stated that unless the defendant is restrained he will proceed to forcefully evict him from the suit land.
6. The defendant has not filed any appearance to this suit. Neither has he filed any response to the

Originating Summons and to this application for injunction. The facts deponed by the applicant are therefore uncontested. The plaintiff has demonstrated through the depositions in his supporting affidavit that he has been in occupation of the suit land since the year 1986 and that he has settled on the same. He has deponed that his occupation has been quiet, open and not forceful. It is for this reason that he has sought prayers to be declared to have acquired the suit land by way of adverse possession.

1. I am satisfied that the plaintiff has demonstrated a prima facie case with a probability of success. It is also apparent that the defendant has been threatening him with eviction and there is a real danger that if the injunction sought is not granted, the plaintiff may very well be evicted from the suit land. This action will no doubt cause him irreparable loss.
2. I therefore allow this application for injunction and order the defendant not to interfere with the plaintiff's continued possession of the suit land until the final determination of this suit.

9. In order to avoid any alterations to the register, I also issue an order of inhibition, inhibiting the registration of any dispositions to the title of the land parcel Baringo/ Issas "A"/452. I direct the plaintiff to extract this order and have it served upon the appropriate Lands Registrar who shall proceed to register this inhibition in the register of the suit land.

10. The costs of this application shall be costs in the cause.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 16TH DAY OF MAY 2013.

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Delivered in the presence of:

Mr. J.K. Misoi holding brief for Mr. M.K. Chebii of Ms M.K. Chebii & Co for the plaintiff/applicant

N/A for the defendant who has not entered appearance