



REPUBLIC OF KENYA

High Court at Eldoret

Environmental & Land Case 268 of 2013

IN THE MATTER OF SECTION 38 OF THE LIMITATION OF ACTIONS ACT, CAP 22

AND

IN THE MATTER OF ORDER 37 RULE 7 OF THE CIVIL PROCEDURE RULES, 2010

AND

**IN THE MATTER OF THE LAND PARCELS KNOWN AS NANDI/KAPTEL/1890 AND
NANDI/KAPTEL/51**

BETWEEN

ALFRED KIPSANG SUSWA PLAINTIFF

V

KIRONGO ARAP NGETICH.....DEFENDANT

RULING

This ruling is in respect of an application dated 26 April 2013 filed by the plaintiff. It is an application for injunction brought under the provisions of Order 40 Rule 1 of the Civil Procedure Rules, 2010 . The plaintiff seeks orders of injunction against the defendant to restrain him from evicting, harassing, or interfering with the plaintiff's user and occupancy of the land parcel Nandi/Kaptel/1890 formerly Nandi/Kaptel/51 pending the hearing and determination of this suit.

This suit was originated by way of Originating Summons brought under the provisions of Order 37 Rule 7 of the Civil Procedure Rules, 2010, and Section 38 of the Limitation of Actions Act, CAP 22, Laws of

Kenya. In the Originating Summons, the plaintiff is seeking orders to be declared to have acquired by adverse possession 4 acres comprised in the land parcel Nandi/Kaptel/51 currently Nandi/Kaptel/1890.

It is the plaintiff's case that the defendant is the registered owner of the land parcel Nandi/Kaptel/51 which measured about 5.8 Hectares (approximately 14.5 acres). It is his case that he has been in occupation of 4 acres of the said land since 1972. He has averred that the defendant in the year 2009 subdivided the land parcel Nandi/Kaptel/51 to create land parcel Nandi/Kaptel/1890 but it is his case that this does not affect his rights over the land occupied by himself.

The Originating Summons is supported by an affidavit which has annexed the registers of the land parcels Nandi/Kaptel/51 and Nandi/Kaptel/1890. There is also annexed a letter from the Chief of Sangalo Location which states that the land was initially occupied by the father of the plaintiff since the year 1972.

The affidavit in support of this application has more or less repeated the averments in the Originating Summons and the affidavit in support.

The defendant despite being served has not entered appearance nor filed a Reply to both the Originating Summons and to this application for injunction.

I think from the material before me, the plaintiff has demonstrated prima facie that he has been in occupation of the suit land for a period in excess of 12 years. The defendant has not filed anything to deny the plaintiff's claim and I see no reason why I should disbelieve him.

The plaintiff has demonstrated a prima facie case and is therefore entitled to an injunction. I therefore issue an order of injunction restraining the defendant from interfering with the plaintiff's quiet possession of 4 acres of the land parcel Nandi/Kaptel/1890 pending the hearing and determination of this suit.

In order to preserve the subject matter of the suit, I also use my discretion to issue an order of inhibition, inhibiting the registration of any dispositions on the land parcel Nandi/Kaptel/1890 until the hearing and determination of this suit. I direct the Lands Registrar to forthwith register the inhibition upon service of this order.

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

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 30TH DAY OF MAY 2013

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Read in open Court

In the Presence of:-

Mr. H.K. Ngeno holding brief for Mr. Barasa of M/s Wambua Kigamwa & Co for the plaintiff.

N/A for defendant who has not entered appearance.