



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
Civil Suit 155 of 2007(OS)

IN THE MATTER OF LAND PARCEL NO. KIMILILI/KIBINGEI/424

PETER KIMINGICHI CHEBOSI

DAVID WASIBALA CHEBOSI

JOB WAFULA KILWAKE =====APPLICANTS

VERSUS

JULIUS KIMINGICHI KILWAKE =====RESPONDENT

RULING

This is an application for an interlocutory injunction. It has been brought by the Plaintiffs, who seek to have the defendant restrained from sub-dividing, selling, transferring, tilling, sub-letting, leasing, charging, entering onto or in any way dealing with the suit property, which is constituted of the seven (7) hectares of land which the plaintiffs are in occupation of, being part of L.R. NO. KIMILILI

/KIBINGEI/424.

The plaintiffs also seek an order of inhibition to stop the registration of all dealings on the suit property until the suit is heard and determined.

It is noteworthy that this application has been brought within these proceedings, which were commenced by way of an Originating Summons for adverse possession. In effect, the substantive action is one in which the plaintiffs seek a declaration that they were the owners of the suit property, on the grounds that they had been enjoying quiet occupation and possession of the property since 1971.

The plaintiffs' assertion was that their mother and step-mother began staying on the property since 1971 and 1972 respectively. The said occupation of the property is said to have been peaceful, exclusive and un-interrupted since then.

The 1st plaintiff/applicant says that he was born in 1960, and that since then, he had been living on the suit property.

He also says that the last born in the their family was born in 1990, and that the said last born had been living on the

property since then.

The assertions of the applicants, regarding the occupation by their mother and step-mother are denied by the respondent. The respondent says that the applicants had never enjoyed a continuous and un-interrupted occupation of the suit property for more than 12 years.

If anything, the respondent makes the point that the applicants and their family members have had several suits and legal disputes over the suit property. Those suits and disputes are said to have been filed before different courts.

The respondent specifically stated that in KIMILILI LAND DISPUTES TRIBUNAL CASE NO.24 OF 1999, there was an order issued on 23/8/2004, for the eviction of the applicants from the suit property.

In the circumstances, the respondent believes that the applicants did not meet the requirements of law, which would entitle them to a declaration that they be registered as proprietors of the suit property, by virtue of adverse possession.

The foregoing responses of the respondent are contained in his replying affidavit, in answer to the substantive Originating Summons.

The respondent did not file any affidavit in answer to the application for an interlocutory relief. Also, the respondent did not attend court on 6/12/2007, when the application was scheduled for hearing.

In effect, the application was unopposed, and the affidavit in support thereof was uncontroverted. That means that even though the respondent was well aware of this case, he had nonetheless threatened to evict the applicants. It also means that the applicants may well be forced off the suit property whilst the case was still pending.

As the applicants' case is for a declaration that they had acquired title to the suit property through adverse possession, that implies that if their alleged continuous peaceable and un-interrupted occupation of the property were to be terminated during the currency of this case, the claim could be defeated.

Accordingly, I hold that the applicants have established a prima facie case with a probability of success. The applicants have also satisfied me that unless the reliefs sought at this interlocutory stage were granted, the applicants would suffer irreparable loss and damage.

In the circumstances, in order to safeguard the suit property pending the hearing and determination of this suit, the respondent shall be restrained by injunction, from sub-letting, leasing out, charging, entering onto or in any way dealing with the seven (7) hectares of land which is currently occupied by the applicants. There shall also issue an order of inhibition, inhibiting the registration of any dealings in respect of the same said seven (7) hectares of land, which are a part of L.R.NO.KIMILILI/

KIBINGEI/424.

The costs of the application are awarded to the applicants.

Finally, for the avoidance of any doubt, it is emphasized that the respondent's right to deal with the rest of the property, which is outside the seven (7) hectares occupied by the applicants, is not in any manner effected by this ruling. In other words, the orders issued herein relate to only the seven (7) hectares currently occupied by the applicants.

Dated and Delivered at Kitale, this 23rd day of January, 2008.

FRED A. OCHIENG

JUDGE