



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 42 of 2007 (OS) (ELC)

1. Land and Environmental Law Division

2. Subject of main suit: Land ownership

Adverse Possession

3. Application dated 1 April 07

a) Orders of injunction to restrain the defendant/respondent

Company from evicting the plaintiff from land

b) Claim of being on land for 28 years

c) No title to suit

4. In reply:

a) The plaintiff is a stranger to the defendant

5. Held:

i) Issue raised are contentious

ii) Issue of title deed number differing 13330/259 for ½ an acre

iii) Injunction to issue

6. Case law

7. Advocate

S. Kingara for Kingara & Co. Advocates for the plaintiff

P.T. Kiiru & E.M. Njenga for Kimani Kamiro & Co. Advocates for the defendant

HAZEL WANJIKU WAMUTITU1ST PLAINTIFF

T.M. KIMATHI2ND PLAINTIFF

VERSUS

JORETH LIMITEDDEFENDANT

RULING NO.2

I: Background of application 1.4.07 for an injunction

1. The plaintiff/applicant herein claims that she has been in a suit land known as LR 13330/259 for over 28 years. She alleges to have seen strangers come to the land and was later notified on enquiring that her parcel of land had been sold.

2. She filed this main suit for Adverse Possession and also filed an application of 1 April 07 for an injunction.

II: Application 1 April 07

3. The applicant prayed this court to restrain the respondent from evicting her out of her property that she has been in possession for over 28 years.

4. The respondent filed a replying affidavit whereby they state that the company owned parcels of land amounting to 429 acres. This land LR4920/3/2 and LR4921/31 were combined together to form LR13330. There were 640 plots made out of the suit land. By Hccc 6206/92 there were trespassers of about 220 people who were evicted from the land. At no time did the defendant know or was aware of the plaintiff.

5. In reply to this the plaintiff stated the suit land may not be the same as that of the defendant and she sought the court's protection. Regardless of this she claims Adverse Possession and thus asks that an injunction do issue against the defendant till the determination of the Adverse Possession.

II: Findings

6. The issue herein is one of an injunction. Should this court grant the plaintiff's injunction orders? She holds no title as she says she bought land from a group known as Thome Farmers 5. This is a share certificate that she holds for entry parcel No.368 and 369. The purchase was made in 1975 and she still awaits the title. Her plot number being 154.

7. The defendant categorically said they do not know Thome Farmers No.5 and are therefore strangers to the plaintiff and to the said farmers.

8. In this case the plaintiff has said to have lived on the land for 18 years. She claims that the land never belonged to the defendants. Is this a case of mistaken identity?

9. I would find that if the plaintiff was successful in her case if she is evicted now she would suffer irreparable loss.

10. I hereby grant the application for an injunction till the determination of this suit. It may be imperative that both parties visit the suit premises to ascertain the exact location of the same.

11. The issue nonetheless is one of Adverse Possession and has the plaintiff been on the suit land uninterrupted for 12 years?. If this is so an injunction at this stage is appropriate.

12. I award costs to applicants/plaintiff.

Dated this 24th day of May 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

S. Kingara for Kingara & Co. Advocates for the plaintiff

P.T. Kiiru & E.M. Njenga for Kimani & Kamiro & Co. Advocates for the defendant.