



**Koisikirr v Karaine (Sued as the administrator of the Estate of
Ipissi Kashinko- Koisikir & 2 others (Environment & Land Case
E010 of 2022) [2022] KEELC 15461 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15461 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E010 OF 2022
LC KOMINGOI, J
DECEMBER 20, 2022**

**IN THE MATTER OF AN APPLICATION UNDER SECTION 38 OF
THE LIMITATION OF ACTION ACT (CAP 22) LAWS OF KENYA**

BETWEEN

SEKITA OLE KOISIKIRR PLAINTIFF

AND

**PURITY TOIYIAN KARAIN (SUED AS THE ADMINISTRATOR
OF THE ESTATE OF IPISSI KASHINKO- KOISIKIR AKA
(DECEASED) 1ST DEFENDANT**

KASHINGO OLE KOISIKIRR 2ND DEFENDANT

MARY KATITO ODAGE 3RD DEFENDANT

RULING

1. The Plaintiff/Applicant through a Notice of Motion brought under Order 40 Rules 1 and 2 of the [Civil Procedure Rules](#) 2010 dated 1st August, 2022 and filed on 3rd August, 2022 approached this court seeking the following prayers;
 - a. A temporary injunction do issue restraining the Respondents, their agents family, servant and / or whomsoever jointly and severally from transferring, transmitting, Page 2 of 4 disposing, or evicting the Applicant and his family from Loitokitok/Ngama/210 pending the hearing and determination of the suit.
 - b. Cost of the Application.
2. The Application is supported by the affidavit of Sakata Ole Kosinkir sworn on 1st August, 2022. It is premised on the following grounds. He attests that he was born and raised on Loitokitok/Ngama/201,



herein referred to as disputed property together with the 1st Respondent, his brother. Upon the death of their parents, each of them occupied 11.45 hectares of the suit land where they settled, established homes and even settled down. Subsequently, they resolved that the disputed land would be registered in the 1st Respondent name in trust during the adjudication process.

3. When the 1st Respondent died on 22nd November, 1973, the Plaintiff/Applicant requested the 2nd Respondent, his brother's daughter, to undertake the succession process in order to inherit his land parcel. Instead, his late brother's grandchild, Purity Toiyian Karaine being the administrator being the estate took out letters in Loitokitok SRM Succession Case No. E020 of 2021 with only the 2nd and 3rd Respondents as beneficiaries.
4. It is the Plaintiff/ Applicant case that the 1st Respondent failed to recognize his interest in the suit land yet he continuously and uninterrupted occupied and developed it since 1966. This was notwithstanding the fact that his 11.45 registerable interests on the disputed land had crystalized for over 12 years. He decries that unless the Respondents are stopped from evicting him, he will be rendered homeless at 102 years despite having buried his children on the suit land.

He confirms that on 12th July, 2007, he lodged a restriction on the suit land in order to prevent any dealing on it until the succession is undertaken.

The Respondents' Case

5. The Application is denied and opposed by the Respondent through Kanayo Ene Kotee Reply Affidavit sworn on 22nd September, 2022 and filed on 23 September, 2022. She confirms that Applicant and her later father are brothers although separately owned their respective land. She maintains that upon request, the Plaintiff/Applicant was temporarily allowed to occupy 2 acres of the suit land which solely belonged to her late father.

Therefore, he is not a beneficiary of property due to lack of an agreement indicating her late father held it in trust. For this reason, he is on fishing expedition having failed to prove he was deceased beneficiary when he filed Oloitokitok Magistrate Page 3 of 4 Court Citation Application on 5th July, 2022 seeking to be granted letters of administration intestate.

6. She confirms that Plaintiff/Applicant lodged a restriction on the suit land on 2007. According to her, the Plaintiff/Applicant adverse possession claims over the disputed land are misguided, given he only occupies and uses 2 acres of the suit land yet the disputed land was registered in 1966.

Further, all of his children or grandchildren are alive. She contends that Application should be disallowed as it seeks to disinherit them.

7. The Notice of Motion was canvassed by oral submissions on 24/10/2022.
8. I have considered the Notice of Motion, the affidavit in support and annexures. I have also considered the response thereto together with the oral submissions.

The issues for determination are;

- a. Whether the Applicant has met the threshold for grant of temporary injunction pending the hearing and determination of this suit?
 - b. Who should bear costs of this application?
9. The principles for grant of temporary injunctions have been set down in precedent setting case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358 where the court held as follows "First, an applicant must show a prima facie case with a probability of success.



Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages.

Thirdly, if the court is in doubt, it will decide an application on the balance of convenience. (*EA Industries v Trufoods*, [1972] EA 420.)” 8. The court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR defined prima facie case as following; “So, what is a prima facie case? I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.” 9.

Based on the pleadings before this court, the Plaintiff/Applicant claims over the suit land is premised in the fact that upon the death of their parents, they resolved with his late brother that the land would be registered in his name but hold it trust. He is there for entitled to his 11.45 hectares share of the disputed land given his rights over crystallized. This is because he has occupied and developed it without any interruption for over 56 Page 4 of 4 years since it was first registered.

These averments are denied by the Respondents who claim that the Plaintiff/Applicant is seeking to disinherit them from their deceased father estate. Given he was only allowed to occupy 2 acres, upon results his claim for 11.45 hectares are baseless.

10. Thought disputed, it is not in doubt the Plaintiff/Applicant occupies a portion of the suit land. The size that he occupies can only be determined once this suit is heard and determined. When the deceased died, the Kajiado Land Registrar was notified. He was also informed that the Plaintiff/Applicant, 2nd Respondent and his nephew Francis Karaine Taiyai are his likely heirs who would assist determine the likely proprietor of the suit land.

This clearly shows that the Plaintiff/Applicant has an interest on the disputed land which needs to be protected as it is being threatened by the Respondents. Consequently, the Plaintiff/Applicant has established a prima facie case.

11. A Certificate of Official search dated 24th October, 2007 and 15th June, 2022 shows that a restriction was lodged on the suit land preventing any dealing until the conclusion of the succession cause. The Respondents have threatened to evict the Plaintiff/Applicant from the disputed which he has occupied and developed. This is notwithstanding he is 102 years old. If evicted, he is likely to suffer irreparable harm owing to his age given he has occupied his portion for over 56 years since it was first registered.
12. On the third limb for grant of injunction orders, the court finds that the balance of convenience tilts in favor of the Plaintiff/Applicant.
13. In conclusively and merit in the application, I grant the orders sought namely;
 - a. That a temporary injunction is hereby issued restraining the Respondents, their agents, family members, servants from transferring, transmitting, disposing of, or evicting the Applicant and his family from land Parcel Number Loitoktok/Ngama/210 pending the hearing and determination of this suit.
 - b. That costs of this application do abide the outcome of the main suit.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20TH DAY OF DECEMBER, 2022.

L.C. KOMINGOI

JUDGE

