



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUSIA

CASE NO. E002 OF 2020

IN THE MATTER OF LIMITATION OF ACTION ACT CAP 22 OF THE LAWS OF KENYA

AND

IN THE MATTER OF L.R. NO. BUNYALA/MUDEMBI/1195

AND

IN THE MATTER OF A CLAIM FOR ADVERSE POSSESSION

BETWEEN

MICHAEL SIBI BULUMA..... APPLICANT

= VERSUS =

MARGART AKOTH WANYAMA

ANJELINE AKO OJIAMBO

JUDITH WANYAMA RESPONDENTS

R U L I N G

1. The plaintiff/applicant has moved the court vide his application dated 22nd September 2020 and brought under the provisions of Order 40 rule 3 plus other enabling legislation. The Applicant prays for orders;

a) Spent

b) That the Respondents have invaded the applicant’s land and even commenced construction on the land same being the suit land, threatening to disturb the applicant’s peace and deny him any colour of rights on the land.

c) That the applicant apprehends that if this application is not prioritized and heard for orders sought, it will be detrimental to him if the intruding respondents are left to escalate their dealings on the suit land.

d) That it is only fair and just that the application is urgently heard and determined for orders sought to retain the status quo of the land pending hearing and determination of the suit.

2. The application is premised on the grounds listed on its face and the affidavit sworn in support thereof. Briefly, the applicant deposed that his occupation of the land has been peaceful and quiet. That his sale agreement over the suit land got burnt in his house in 2015 and he reported the matter to the police. He deposed further that the respondents’ registration as owners of 0.64ha, 0.54ha and 0.54ha respectively was unlawful and an infringement of his rights over the suit land Bunyala/Mudembi/1195. That the respondents have daringly brought in building materials on the applicant’s land and are likely to commence construction.

3. In opposing the application, the respondents filed two sets of replying affidavits. The 1st respondent deposed that the application is incurably defective as she cannot be enjoined from dealing in land No. 1195 which does not exist. That the applicant is taking advantage of them since no land was sold to him. She deposed that the value of the land is known so the applicant can be duly compensated if he succeeds in this case. She urged the court to dismiss the suit.

4. The 3rd respondent swore the replying affidavit on her own behalf and on behalf of the 2nd respondent who is her sister. She deposed that L.R. No. Bunyala/Mudembi/1195 does not exist because it mutated into new numbers. That currently they own Bunyala/Mudembi/3254 as shown in the copy of title annexed. That the application is defective.

5. Before the hearing of the application commenced, the applicant through his counsel sought for time to amend his application but later changed his mind against the amendments. The respondents pleaded in their respective replying affidavits that the title number Bunyala/Mudembi/1195 no longer exists as it was closed on subdivision. They annexed copies of titles issued on 8/5/2015 to corroborate their averment of mutation of L.R No. Bunyala/Mudembi/1195. At page 2 of the copy of titles annexed, it indicates that the new numbers 3253, 3254 and 3258 were partitioned from L.R No. Bunyala/Mudembi/1195.

6. The applicant did not file any further affidavit to contest the averments made by the respondents on the changes that happened to the suit title. He also did not annex any current searches on the suit title no 1195 to his pleadings. Instead he opted to answer to the respondents' depositions through submissions which is an inadmissible procedure. In the green card annexed by the applicant, as at 18/3/2015, the suit title was jointly registered in the names of the Respondents. Once the applicant was served with copies of titles showing new numbers issued, he could not ignore the changes then submit ***“that it is a difficult point to imagine when and how the purported sub-divisions to Bunyala/Mudembi/1195 happened and title issued to the 1st and 3rd respondents when records from the lands show that L.R Bunyala/Mudembi/1195 still exists.”***

7. The applicant did not show this court evidence that he contacted the lands office who confirmed to him that the purported subdivision was never undertaken. Consequently, in view of the fact that the order is sought to issue against a parcel number which was already closed at the time of filing of this suit, I find the Applicant's application as defective. Accordingly, I order the application struck out with costs to the respondents.

Dated, signed and delivered at BUSIA this 10th day of Feb., 2021.

A. OMOLLO

JUDGE