



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 210 OF 2017

ENOCK TUITOEK.....PLAINTIFF

- VERSUS-

REV.PETER K KARANJA.....1ST DEFENDANT

AMOS G NJUNGUNA.....2ND DEFENDANT

SIMON M NJERU.....3RD DEFENDANT

PETER G MWARIRI.....4TH DEFENDANT

MARY M KAMAU.....5TH DEFENDANT

ERNEST KAMAU.....6TH DEFENDANT

EUNICE M NYAMWEGA.....7TH DEFENDANT

RUTH KAMUITU.....8TH DEFENDANT

JOSEPH M GITHINJA.....9TH DEFENDANT

DAVID M KARIUKI.....10TH DEFENDANT

NYAMBURA KARIGU.....11TH DEFENDANT

MONICA W KARIUKI.....12TH DEFENDANT

EVASON M GACHOHO.....13TH DEFENDANT

NICHOLSON M MAUNDU.....14TH DEFENDANT

JOSEPHINE G NYANGINA.....15TH DEFENDANT

MESHARK MUGAMANGI.....16TH DEFENDANT

SAMUEL M KASYULA.....17TH DEFENDANT

MARY K KASYULA.....18TH DEFENDANT

GITAU MWAURA.....19TH DEFENDANT

OCHUKU O IGNATIUS.....	20 TH DEFENDANT
THE TRUSTEES PF PCEA DANDORA PARIS.....	21 ST DEFENDANT
SUSAN N KARIUKI.....	22 ND DEFENDANT
NDUNGU GACHUGU.....	23 RD DEFENDANT
GEORGE K MUEMA.....	24 TH DEFENDANT
STEPHEN M MUTIE.....	25 TH DEFENDANT
MARY W MUNYIRA.....	26 TH DEFENDANT
GRACE N KAMAU.....	27 TH DEFENDANT
TABITHA W NGANGA.....	28 TH DEFENDANT
MARY W KARIUKI.....	29 TH DEFENDANT
SAMUEL M KARIUKI.....	30 TH DEFENDANT
MAHAT K RUBLE.....	31 ST DEFENDANT
UMAR A LATIF.....	32 ND DEFENDANT
WILFRED K KIRIGI.....	33 RD DEFENDANT

RULING

1. The Plaintiff / Applicant files a Notice of Motion dated 28th March 2017 in which it sought the following orders: -

1. Spent

2. Spent

3. That the Defendants /Respondents by themselves, their agents, servants and/or employees be restrained by way of an interim injunction order of this Honourable Court from alienating, selling, disposing, developing and/or in any other way interfering with the land parcels LR No. 9042/297 and 9042/298 pending the hearing and determination of this suit.

4. Costs of this application be in the cause.

2. The Applicant contends that he is the registered owner of LR No. 9042/297 and LR No.9042/298 (suit properties). The Applicant states that the Respondents trespassed on the suit properties and started putting up structures and have been selling portions of the suit properties to unsuspecting third parties. The Applicant has demanded that the Respondents move out of the suit properties in vain.

3. The Applicant states that the Respondents purport to have purchased their respective portions from an agent not known to him and that as a result of the unlawful occupation, the Applicant has been unable to pay land rent and rates which have now accumulated to millions of shillings. It is on this basis that the Applicant seeks the injunctive orders.

4. The Respondents opposed the Applicant's application through a replying affidavit sworn on 15th February 2018. The Respondents contend that the Applicant has not demonstrated any evidence that he has interest in LR No. 9042/297 and that the Applicant transferred his interest in the suit properties to one Francis M Kariuki through an exchange agreement dated 20th July 2003. The Respondents further argue that they purchased portions of the suit properties through Specialized Supplies Limited where the Applicant is a director. The Respondents have put up storey buildings, a school, churches and other developments on the suit properties.

5. The Respondents further argue that the Applicant wrote demand letters in 2004 asking them to move out and that he has filed this suit 14 years later without disclosing that there was another suit which was filed in 2007 in which the Applicant was named as a party but he failed to raise a counter-claim. They state that though the 2007 case was dismissed, an application for its reinstatement has been made and that the suit will be reinstated which will render the present one an abuse of the process of the court.

6. Though this application was filed in 2017, the Applicant seems not to be keen to prosecute the same. It took years to serve all the Respondents. When the application was finally set down for hearing, the Applicant did not take any interest in the same. Directions were given on 23rd June 2020 that parties put in written submissions. Despite the Applicant's lawyers being served with hearing notice, they did

not file any submissions. It is only the Respondent who filed their submissions.

7. I have considered the Application as well as the opposition to the same by the Respondents. I have also considered the submissions by the Respondents. The only issue for determination is whether the Applicant has demonstrated that he has a prima facie case to warrant issuance of an injunction.

8. There is no contention that the Respondents are in occupation of the suit properties. The Respondents took possession on the basis of purchase from a company associated with the Applicant. Most of the Respondents purchased their portions in the 90's. The Applicant does not deny this. He only states in passing in the Plaintiff that the Respondents purchased their portions from an agent who had no authority to sell the land.

9. When the Respondents applied to the National Land Commission to be allocated LR No.9042/297, the National Land Commission wrote back to them advising them to pursue the Applicant and Specialized Supplies Limited in court as the land was private. There being no denial that Specialized Supplies Limited where the Applicant was a director sold the land to the Respondents and the Respondents being in possession, I do find that the Applicant has not demonstrated that he has a prima facie case to warrant issuance of an injunction.

10. The Respondents are in occupation and have been so for decades. Even if it turns out that the land was not sold in a proper way, the Applicant can be compensated in damages. Even if the court were to be in doubt, the balance of convenience tilts in favour of the Respondents who are in occupation. If an injunction were to be issued, it will amount to directing that they be evicted from the suit properties. I therefore find no merit in the Applicant's application which is hereby dismissed with costs to the Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 23RD DAY OF MARCH 2021

E.O.OBAGA

JUDGE

In the Virtual presence of:-

Mr Thuita for Defendants

Court Assistant: Okumu

E.O.OBAGA

JUDGE