



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 36 OF 2019

TERESIA WAHU KARANJA.....1ST PLAINTIFF

WARUGURU KARANJA.....2ND PLAINTIFF

VERSUS

MULI KIKONDE.....1ST DEFENDANT

BENARD KAEMI MUTETI.....2ND DEFENDANT

PETER MWANZIA MUTUA.....3RD DEFENDANT

DANIEL MUOSO.....4TH DEFENDANT

RULING

1. In the Notice of Motion dated 28th March, 2019, the Plaintiffs have prayed for the following orders:

- a. That an order of temporary injunction be issued restraining the Defendants/Respondents, its servants, agents and/or employees or any other person whomsoever claiming under it from remaining on and trespassing on all that parcel of land known as Plot L.R. No. Ndithini/Mananja 7/38 and from doing any other prejudicial act thereon pending the hearing and determination of the suit herein.*
- b. That orders herein be enforced by the Officer Commanding Station Masinga Police Station.*
- c. Costs of this Application be borne by the Defendants/Respondents.*

2. The Application is supported by the Affidavit of the 1st Plaintiff who has deponed that they are the lawful owners of the suit property; that the Defendants trespassed on parcel of land known as Ndithini/Mananja 7/38 (*the suit property*) in the year 2016 and that the Defendants have threatened to put up permanent structures on the suit property.

3. The Defendants filed Grounds of Opposition in which they averred that the suit is time barred; that they have been living on the suit property since the 1920's and the Plaintiffs' titles are an illegality the same having been extinguished by the Limitation of Actions Act.

4. In his Replying Affidavit, the 2nd Defendant deponed that they have lived as families on the mother parcel of land number L.R. No. 11931 since time immemorial; that he was born on the suit property in 1972 and that they have never parted with possession of the land.

5. The 2nd Defendant deponed that they joined another group of persons and filed HCCC No. 1104 of 1999 which is still pending in court. The 2nd Defendant deponed that they obtained orders of the court in that suit stopping the sale of the suit land.

6. In his submissions, the Plaintiffs' advocate submitted that the land in dispute is known as Ndithini/Mananja 7/38 measuring approximately 60 acres; that the Defendants have trespassed on the suit property and that the Defendants have not established that they have been on the suit land without any interruption.

7. On their part, the Defendants' advocate submitted that the Plaintiffs do not have any right or claim over the suit property as the same was extinguished by law and that an injunction at this stage will amount to a determination of the Plaintiffs' suit without hearing them.

8. The Plaintiffs' claim is that they are the registered proprietors of land known as Ndithini/Mananja Block 7/38 measuring approximately 24.28 Ha. The Plaintiffs have exhibited the Title Deed in respect to the suit property. The said title shows that the land was registered in favour of the Plaintiffs on 6th December, 2013.

9. The Plaintiffs have not denied that the suit property was initially known as L.R No. 11931 which was later sub-divided. The Plaintiffs have also not denied that the Defendants are in possession of the suit property.

10. Considering that the ultimate prayer in the Plaintiffs' Plaint is to have the Defendants evicted from the suit property, the issue of whether the Defendants have been on the suit property continuously, peacefully and without the permission of the Plaintiffs for twelve (12) years must be considered first.

11. Indeed, there is a suit in which the Defendants have claimed for adverse possession in respect of L.R. No. 11931. In that suit, the parties agreed to maintain the *status quo* pending the hearing and determination of the suit.

12. That being so, and considering that the Defendants are in possession of the suit land, or a portion thereof, the prevailing *status quo* should be maintained.

13. In the circumstances, the Plaintiffs' Application dated 28th March, 2019 is dismissed with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 19TH DAY OF MARCH, 2021.

O.A. ANGOTE

JUDGE