



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO. E10 OF 2020

WASHINGTON OTIENO ADONGO.....PLAINTIFF

VERSUS

MESHACK ODENYO.....1ST DEFENDANT

JACTONE OTIENO.....2ND DEFENDANT

RULING

Washington Otieno Adongo hereinafter referred to as the applicant has come to court against Meshack Odenyo and Jactone Otieno hereinafter referred to Respondents for an order that **the honourable court be pleased to grant a permanent injunction order restraining the Respondents/Defendants in person and or their agents or persons acting through their orders from interfering with, trespassing into or in any other way dealing with the disputed land parcel NO. LAR KISUMU/KORANDO/2690 pending the hearing and determination of this suit.**

The application is based on grounds **the Applicant/Plaintiff is the registered owner of land parcel NO. LR. Kisumu/Korando/2690.**

- a) The Respondent/Defendants trespassed into and caused to be ploughed land parcel NO. LR. Kisumu/Korando/2690, without authority of the Plaintiff/Applicant on 17th September 2020.**
- b) The Respondents/Defendants assaulted and grievously injured the Applicant/Plaintiff when he went to his land whereupon he found them in the process of oxen-ploughing after he enquired who permitted them to trespass into his property.**
- c) That the Respondents/Defendants even after being arrested and charged with criminal offence Maseno Court Case File No. E012/2020, have threatened to and continue trespassing on the suit parcel.**
- d) The applicant prays for costs in his favour.**

In the supporting affidavit, the applicant states that the parcel of land is registered in his name after the process of adjudication. The Respondent has trespassed on the land without his permission and have refused to vacate the land.

The Respondent filed a replying affidavit stating that their late father and grandfather namely Edward Ago Ogada was a brother to the applicant's father the late Adongo Ogada. That the late Edward Ogada who is their father and grandfather respectively shared suit parcel number KISUMU/KORANDO/2690 and in the initial survey map the applicant and the respondents' families had their demarcated portion of land.

That the first Defendant herein has been farming on the said land parcel for the last 40 years while the 2nd Defendant herein has been utilizing the portion of land for the last over twenty years and this is the only place where their families have been producing their food without any interference from either the plaintiff nor his family that it is even coming to them as a shock as to why the applicant want to evict them from a portion of land which they have always deem to be their own land.

That they have always enjoyed un interrupted and peaceful possession of their portion of land until some times last year after their late father and grandfather Edwards death when they were served with summons to enter appearance claiming that they have trespassed on the plaintiff's piece of land which is not the case as they have been in possession on a portion of the suit parcel of land for a period of more than 12 years.

That despite them occupying their marked portion of land the current survey map shows that the whole of the land parcel Kisumu/Korando/2690 was unlawfully merged.

That in the event that this application is allowed their families will lose their source of livelihood as such it is their humble prayer that this application be dismissed as it has been brought without full disclosure of all material facts

That if the prayers herein are allowed the defendants will suffer to irreparable loss as they will lose their only source of livelihood.

The applicant has denied the contents of the replying affidavit and states that the disputed parcel of land is registered in his name and he has never shared with someone else.

I have considered the evidence on record and submissions and do find that though the plaintiff is the registered owner of the suit property, the defendants are in possession of the same. It is not clear how long they have been in possession of the land. They claim to have been utilising the land for 40 years and 20 years respectively and that they have relied on the land for their livelihood.

In the above circumstances an order of injunction cannot be issued as prayed as it is not clear when the defendants entered the land.

I do decline to grant the injunction as prayed as it will amount to an eviction. However, I do order that the defendants be restrained from any act of wastage, cutting of trees, making of bricks or scooping the soil on the suit land until the suit is heard and determined. Costs in the cause.

DATED AT KISUMU THIS 18th. DAY OF MARCH, 2021

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2019.

ANTONY OMBWAYO

JUDGE