



Letitik v Roman Catholic Diocese of Marsabit (Environment & Land Case E002 of 2020) [2021] KEELC 4743 (KLR) (27 May 2021) (Ruling)

Neutral citation: [2021] KEELC 4743 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE E002 OF 2020**

**YM ANGIMA, J
MAY 27, 2021**

BETWEEN

BENSON LANES LETIKTIK PLAINTIFF

AND

ROMAN CATHOLIC DIOCESE OF MARSABIT DEFENDANT

RULING

1. By an originating summons dated October 12, 2020 expressed to be based upon sections 7, 17, 37, & 38 of the *Limitation of Actions Act* (cap 22), order 37 rule 7 of the *Civil Procedure Rules* (the Rules), section 17 of the *Land Act* 2012 and all enabling provisions of the law, the plaintiff sought adverse possession of approximately 16.1877 ha. of the defendant's parcel No Samburu Poro 'A' 95 (the suit property). He contended that he had been in possession of suit property since 2000 without interruption and that he had developed it extensively. It was further contended that the defendant's right to recovery of the suit property had been extinguished by operation of law.

B. The Plaintiff's Application

2. Simultaneously with the filing of the originating summons the plaintiff filed a notice of motion of even date under order 40 rules 1,2 & 3 and order 37 rule 7 of the Rules, sections 3 and 3A of the *Civil procedure Act* (cap 21) and all enabling provisions of the law seeking a temporary injunction restraining the defendant from selling, alienating, disposing of or interfering with the plaintiff's possession of the suit property pending the hearing and determination of the application.
3. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the plaintiff on October 12, 2020. It was contended that the plaintiff had been enjoying peaceful and uninterrupted possession of the suit property since 2000. The plaintiff further contended that he was apprehensive that the defendant might evict him from the suit property or deal with the title to the property to his detriment since he had already settled thereon with his family.



C. The Defendant's Response

4. The defendant filed a replying affidavit sworn by Fr Steven Lekasuyan on December 24, 2020 in opposition to the application. It was contended that the defendant had bought the suit property from the plaintiff's father, Muteita Letiktik, for valuable consideration in 1992. It was further contended that upon the sale the plaintiff's father remained a portion of 213.9403 ha. known as Samburu Poro 'A' 94 hence the plaintiff could not be a squatter on the suit property whereas his father had a large parcel of land.
5. The defendant disputed that the plaintiff had settled on the suit property and contended that the only structure thereon was a thatched house which was unoccupied. It was contended that the plaintiff had failed to satisfy the conditions for the grant of an interim injunction since he had failed to demonstrate a *prima facie* case with a probability of success and that he shall suffer irreparable injury should the injunction sought be denied. The court was consequently urged to dismiss the application with costs.

D. Directions On Submissions

6. The plaintiff filed a further affidavit sworn on March 4, 2021 in response to the defendant's replying affidavit. He conceded that the suit property was bought from his father but stated that his father was a polygamous man who had 4 wives and over 40 children hence there wasn't sufficient land for all of them. The plaintiff asserted that he had no alternative land to move to.
7. The plaintiff further contended that he had invested in large scale farming on the suit property and that he kept cows, goats and sheep thereon. He contended that he had satisfied all the requirements for the grant of an interim injunction and that he shall suffer irreparable loss and damage unless the injunction sought was granted. He consequently urged the court to allow the application.

E. Directions On Submissions

8. When the application was listed for hearing on November 30, 2020, it was directed that the same shall be canvassed through written submissions. The parties were given timelines within which to file and exchange their submissions. Although the parties were unable to comply with the initial timelines, the plaintiff eventually filed his submissions on March 16, 2021 whereas the defendant filed its submissions on March 2, 2021.

F. The Issues For Determination

9. The court has perused the plaintiff's notice of motion dated October 12, 2020, the defendant's replying affidavit in opposition thereto, the plaintiff's further affidavit as well as the material on record. The court is of the opinion that the following issues arise for determination herein:
 - (a) Whether the plaintiff has satisfied the requirements for the grant of an interim injunction.
 - (b) Who shall bear costs of the application.

G. Analysis And Determination

- (a) Whether the plaintiff has satisfied the requirements for the grant of an interim injunction
10. The court has considered the material and submissions on record on this issue. Whereas the plaintiff contended that he had satisfied all the requirements for the grant of an injunction, the defendant contended otherwise. Interestingly, both parties relied upon the case of *Giella v Cassman Brown & Co*



Ltd [1973] EA 358 and *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR in support of their respective submissions.

11. The principles for the grant of an interim injunction were summarized in the case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358 as follows:-
 - (a) First, an applicant must demonstrate a *prima facie* case with a probability of success at the trial.
 - (b) Second, an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which cannot be adequately compensated by an award of damages.
 - (c) If the court is in doubt on the second principle, it shall decide the case on a balance of convenience.
12. It is evident from the material on record that the plaintiff is seeking adverse possession of the suit property which is currently registered in the name of the defendant. Although the plaintiff did not disclose at the *ex parte* stage that it was his father who had sold the suit property to the defendant, he conceded as much in his further affidavit sworn on March 4, 2021. It is also evident from the material on record that the plaintiff did not provide any evidence of his occupation of the suit property in his supporting affidavit. The photographs he annexed to his further affidavit are hardly visible and one cannot discern what they were intended to show. The photographs were not accompanied by any certificate to show where and by whom they were taken.
13. The court is thus not satisfied that the plaintiff has demonstrated on a *prima facie* basis that he has a serious claim for adverse possession against the defendant. There is no evidence to demonstrate that any of the plaintiff's legal rights have been violated or threatened with violation by the defendant as laid out in the *Mrao Limited Case*.
14. The court is also not satisfied on the basis of the material on record that the plaintiff has demonstrated what irreparable loss, if any, he might suffer should the order of injunction be denied. In the case of *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal considered the nature of irreparable loss as follows:

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, *prima facie*, the nature and extent of the injury. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is of such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”
15. The court is not satisfied on the basis of the material on record that the plaintiff has demonstrated the nature and extent of the loss or injury he might otherwise suffer in the absence of an injunction. Even if it were to be granted in the plaintiff's favour that he is rearing some cows, sheep and goats on the suit property, there is no evidence to demonstrate that his business cannot be adequately compensated by an award of damages. Consequently, the court is not inclined to grant the plaintiff an interim injunction.
 - b. Who shall bear costs of the application



16. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to section 27 of the [Civil Procedure Act](#) (cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co Ltd* [1967] EA 287. The court finds no good reason why the successful party should not be awarded costs of the application. Accordingly, the defendant shall be awarded costs of the application.

G. Conclusion And Disposal

17. The upshot of the foregoing is that the court finds no merit in the plaintiff's application for an interim injunction. Accordingly, the plaintiff's notice of motion dated October 12, 2020 is hereby dismissed with costs to the defendant. It is so ordered.

It is so decided.

RULING DATED AND SIGNED IN CHAMBERS AT NYAHURURU THIS 27TH DAY OF MAY 2021 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Mr. Gichuki for the Defendant

No appearance for the plaintiff

C/A- Carol

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Y. M. ANGIMA

JUDGE

