



Mucheru & another v Njoso (Environmental and Land Originating Summons E012 of 2022) [2022] KEELC 14630 (KLR) (3 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14630 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E012 OF 2022
YM ANGIMA, J
NOVEMBER 3, 2022

BETWEEN

BEATRICE WANJIRU MUCHERU 1ST PLAINTIFF

STEPHEN MUNYAO KANIA 2ND PLAINTIFF

AND

SAMUEL KAINAMIA NJOSO DEFENDANT

RULING

A. The Plaintiffs' Application

1. By a notice of motion dated March 8, 2022 based upon Sections 1A, 1B & 3A of the *Civil Procedure Act* (Cap.21), Order 40 rule 1, 2, 3 & 4, Order 51 rules 1 & 3 of the *Civil Procedure Rules, 2010* (the Rules), and all other enabling provisions of the law, the Plaintiffs sought a temporary injunction to issue restraining the Defendant from trespassing, selling, transferring, leasing, alienating, interfering or dealing with Title No. Nyandarua/Ol Kalou South/1699 (Parcel 1699) pending the hearing and determination of the suit.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn jointly by the Plaintiffs on March 8, 2022. It was contended that the Plaintiffs had been in continuous and uninterrupted possession of Parcel 1699 for periods exceeding 12 years hence they had acquired the same through the doctrine of adverse possession. The Plaintiffs further contended that the Defendant had started excavating the land and setting up a quarry for the purpose of displacing or evicting them during the pendency of the suit.

B. The Defendant's Response

3. The Defendant filed grounds of opposition dated March 21, 2022 and a replying affidavit sworn on the same date in opposition to the application. In his affidavit he stated that the 1st Plaintiff had failed to



disclose that she was the wife of Isaac Njenga Munyao who was one of the Defendants in Nyahururu ELC No.245 of 2017 who was evicted from Parcel No.1698 on August 9, 2021 pursuant to a judgment and decree passed in that suit.

4. The Defendant further stated that the 2nd Plaintiff had failed to disclose that he was the son of one Gregory Munyao who was one of the Defendants in Nyahururu ELC No. 245 of 2017 who was also evicted from Parcel 1698 on account of the aforesaid judgment. The Defendant pointed out that in the aforesaid suit the 1st Plaintiff's husband and the 2nd Plaintiff's father had counterclaimed for adverse possession of Parcel 1698 which counterclaim was dismissed by the court.
5. The Defendant stated that he bought Parcel 1699 from his brothers in 2002 whereupon he took possession, fenced it off and constructed staff quarters for his farm workers. He further stated that sometime in 2012 when the Plaintiffs' family members invaded the suit property and beat up his workers the matter was reported to the police after which the invaders disappeared to avoid arrest.
6. The Defendant denied that he was setting up any quarry on Parcel 1699 and contended that the photographs exhibited by the Plaintiffs were taken on August 9, 2021 during their eviction from Parcel 1698 and he exhibited additional photographs taken during the eviction. He also exhibited what he stated were the current photographs of Parcel 1699 which did not depict any excavations thereon.
7. It was the Defendant's contention that upon the Plaintiffs eviction from Parcel 1698 they moved to Parcel 1628 where they reside to date. The Defendant therefore contended that the Plaintiffs had failed to satisfy the requirements for the grant of a temporary injunction as required by law and urged the court to discuss it with costs.

C. The Plaintiffs' Rejoinder

8. The 2nd Plaintiff filed a further affidavit sworn on May 19, 2022 in response to the Defendant's replying affidavit. He stated that although he was previously in occupation of Parcel 1627 he relocated to Parcel 1699 upon the former's subdivision. It was his contention that the Defendant had fraudulently acquired title to the suit property. He did not, however, dispute that his father and the 1st Plaintiff's husband had lodged a counterclaim for adverse possession of Parcel 1698. He did not also dispute that the photographs annexed to the Defendant's affidavit related to the eviction exercise on Parcel 1698 pursuant to the judgment delivered in Nyahururu ELC No.245 of 2017.

D. Directions On Submissions

9. When the application was listed for inter partes hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the Plaintiffs' submissions were filed on July 5, 2022 whereas the Defendant's submissions were filed on June 14, 2022.

E. The Issue For Determination

10. The court has considered the Plaintiffs' notice of motion dated March 8, 2022, the Defendant's replying affidavit in opposition thereto as well as the 2nd Plaintiff's further affidavit. The court is of the opinion that the main question for determination herein is whether or not the Plaintiffs have satisfied the legal requirements for the grant of the temporary injunction sought.

F. Analysis And Determination

11. The court has considered the material and submissions on record on the issue. Whereas the Plaintiffs submitted that they had satisfied such requirements the Defendant contended otherwise. The



principles for the grant of a temporary injunction are well settled. The parties relied upon the famous case of *Giella –vs- Cassman & Co. Ltd* [1973] EA 358 in support of their respective submissions. What the parties were not agreed upon was the application of those principles to the instant case.

12. In the said case, those principles were summarized 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 shall otherwise suffer irreparable injury.
 - c. Third, where the court is in doubt on (b), it shall determine the application on a balance of convenience.

13. The court has fully considered the material on record and the rival submissions of the parties. The court finds no evidence on record to demonstrate that the Plaintiffs have been in occupation of Parcel 1699 for the alleged number of years or at all. They have not demonstrated any developments they have undertaken on the land. There is no evidence to demonstrate that the Defendant is excavating a quarry on Parcel 1699 as alleged. In fact, when the Defendant exhibited several photographs to demonstrate that the photographs annexed to the Plaintiffs’ supporting affidavit were with respect to their eviction from Parcel 1698, the Plaintiffs did not dispute the same in their further affidavit. The 1st Plaintiff did not deny that her husband had claimed adverse possession of Parcel 1698 in Nyahururu ELC No.245 of 2017. The 2nd Plaintiff did not also deny that his father had similarly counterclaimed for adverse possession of the same parcel in the said case and lost. In the premises, the court is far from satisfied that the Plaintiffs have demonstrated a *prima facie* case with a probability of success as required by law. Accordingly, there is no need to consider the 2nd and 3rd principles for the grant of an injunction.

G. Conclusion And Disposal

14. The upshot of the foregoing is that the court finds no merit in the Plaintiffs’ application for interim orders. Consequently, the Plaintiffs’ notice of motion dated March 8, 2022 is hereby dismissed with costs to the Defendant. The suit shall be mentioned on January 23, 2023 for pre-trial directions.

Orders accordingly.

RULING DATED AND SIGNED AT NYAHURURU THIS 3RD DAY OF NOVEMBER, 2022 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

N/A for the Plaintiffs

Mr. Ndichu for the Defendant

C/A - Carol

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Y. M. ANGIMA

JUDGE

