



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 22 OF 2018

IN THE MATTER OF THE LIMITATION OF ACTIONS ACT CAP 22 LAWS OF KENYA

AND

**IN THE MATTER OF A CLAIM FOR ADVERSE POSSESSION IN RESPECT OF LAND PARCLES NO. CIS
MARA/OLOLULUNGA/10268**

BETWEEN

CHEMOIYWO CHEPKWELAT.....1ST PLAINTIFF/APPLICANT

HENRY KIPRONO CHEBUSIT.....2ND PLAINTIFF/APPLICANT

TOWETT KIPKIRUI & 80 OTHERS.....3RD PLAINTIFF/APPLICANT

VERSUS

EZEKIEL KIPCHUMBA LANGAT.....1ST DEFENDANT/RESPONDENT

NAOMI CHERONO.....2ND DEFENDANT/RESPONDENT

RULING

By an Application dated 9th March, 2018 and brought under order 51 Rule 1 of the Civil Procedure Rules Order 40 Rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act the Applicant sought for an order of injunction restraining the Respondents from entering, selling, transferring, evicting or in any manner dealing with the Applicants possession, use and occupation of land parcel CIS MARA/OLOLULUNGA/10268 pending the hearing and determination of the suit herein.

The Application was supported by the affidavit of Henry Kiprono Chebusit in which he states that he has the authority of the other plaintiffs to swear the Affidavit in support of the Notice of Motion. The Deponent states that all the Plaintiffs reside on Land Parcel No. CIS MARA/OLOLULUNGA/10268 and that they have been in continuous occupation of the land for a period of 19 years following the El Niño rains of 1998.

The Applicant avers that the suit Parcel of land was part of the Maasai Mau while awaiting permanent settlement and during their occupation of the land they proceeded to demarcate their boundaries and they have continued to live on the parcel of land since then until January, 2018 when the Local Administrators demanded that they vacate the suit land at the instigation of the Respondents who are the registered owners of the land.

The Application was opposed by the respondents who filed a replying affidavit sworn by the 1st Respondent in which he depones that they are the registered owners of the suit land and have title to the land that was issued to them in year 2000 from the larger Nkaroni Group Ranch in which they were members during the sub-division of the land and that they have been in possession of the land since 1997 where they rear livestock and hence enjoyed quiet occupation and possession since then until January, 2018 when the land was invaded by some of the plaintiffs and a report made to the area police station vide OB. NO. 4/4/03/2018 and the Local Area Chief.

The Respondents deny that the Applicants lived on the suit land and have annexed to their affidavit photographs showing their houses and to the contrary the Applicants have not shown any proof of occupation.

I have read the application before me and the submissions filed by the parties and this being an Application for grant of an order of injunction the parameters for the issuance of the same is already well settled as whether the applicants have established a prima facie case, whether

damages will not be adequate compensation and in whose favour does the balance of convenience tilts.

In the Application before me the Applicants' interests on the land is based on the doctrine of adverse possession they claim that they have occupied the land since 1998 and that their occupation was not interrupted. I will not go in the merits of their claim as that will be decided at the full hearing. However, save for the claim, the applicants have not exhibited any proof of their occupation of the suit land infact the Respondents contention that they invaded their land has not been controverted, the Applicant admits that they occupied the land which forms part of the Maasai Mau. However, the Respondents other than exhibit their title to the land have filed an affidavit by the area Chief who denied the Applicants as occupants of the suit land a fact that the applicants have not rebutted and from the above it is obvious that the Applicants have not satisfied the first condition for the grant of orders of injunction as held in the case of **GEILLA –VERSUS- CASSMAN BROWN(1973)EA 358** where an applicant must show a prima facie case with a probability of success and damages will not be adequate compensation.

Having found that the Applicant has not satisfied the condition, I will not address myself on the other grounds and in view of the above I will dismiss the Notice of Motion dated 15th March, 2018 with costs to the Respondents.

DATED, SIGNED and DELIVERED in open court at NAROK on this 10th day of July, 2019

Mohammed Noor Kullow

Judge

10/7/19

In the presence of:-

Mr Kariuki for the Plaintiff

N/A for the Defendant

CA:Chuma/Kimiriny

Mohammed Noor Kullow

Judge

10/7/19