



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

ELC NO. 1275 OF 2015(O.S)

HASSAN NOOR ABBASS 1ST PLAINTIFF

FRANCIS ARASA 2ND PLAINTIFF

FARHIA MOHAMED ADEN 3RD PLAINTIFF

SAADIA ABUBAKAR IBRAHIM 4TH PLAINTIFF

WILLY PAUL MAUTA 5TH PLAINTIFF

VERSUS

PAMELA BWARI BURUCHARA 1ST DEFENDANT

LAND REGISTRAR, NAIROBI 1ST DEFENDANT

RULING

The plaintiffs brought this suit by way of Originating Summons seeking a determination of the questions as to whether they have acquired ownership of all that parcel of land known as L.R No. 209/10914 (Grant No. I.R 162663) (hereinafter referred to as “the suit property”) by adverse possession and whether they should be registered as the proprietors thereof in place of the 1st defendant.

What is before me is the plaintiff’s Notice of Motion application dated 10/12/2015 seeking a temporary injunction restraining the 1st Defendant from selling, transferring, evicting or interfering with their quiet possession of the suit property pending the hearing and determination of the suit. The plaintiffs’ case against the 1st defendant is that they have occupied the suit property openly and continuously for uninterrupted period of over twelve (12) years and as such they have acquired the property by adverse possession. In their affidavit in support of the application sworn by the 1st plaintiff, the plaintiffs have contended that they entered onto the suit property and put up residential houses thereon which they have occupied continuously since 1996. The plaintiffs have contended that the 1st defendant working in cahoots with the Chief of the area where the suit property is situated has consistently threatened them with eviction.

The 1st defendant opposed the application through grounds of opposition dated 21/12/2015 and two (2) affidavits sworn on 21/12/2015 and 25/2/2016 respectively. I have ignored the affidavit of one, Jared Mochoge Mayienda that was also filed in opposition to the application because it was not properly executed. In the jurat of the said affidavit, it is indicated that it was signed by the 1st defendant instead of Jared Mochoge Mayienda. In response to the application the 1st defendant has denied that the plaintiffs have occupied the suit property for over 12 years. The 1st defendant has averred that the suit property was allocated to her in 1987 and that she was issued with a title in respect thereof on 6/3/2014 by the Commissioner of Lands. The 1st defendant has averred that she was in actual occupation of the suit property until about three (3) years prior to the filing of this suit when she travelled to United States of America. The 1st defendant has averred that the plaintiffs invaded the suit property while she was away and put up temporary structures thereon which they have rented out to tenants. The 1st defendant has annexed to her affidavit photographs showing the structures which the plaintiffs are said to have put up on the suit property.

The application was argued by way of written submissions. The plaintiffs filed their submissions on 23/2/2016 while the 1st defendant filed her submissions in reply on 25/2/2016. I have considered the plaintiffs’ application together with the affidavits filed in support thereof. I have also considered the grounds of opposition and replying affidavits filed in opposition to the application. Finally, I have considered submissions by counsel. In the case of *Giella v Cassman Brown (1973) Ltd. E. A 358*, it was stated that:

“The conditions for grant of an interlocutory injunction are now, I think well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted

unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it would decide an application on a balance of convenience.”

It is not disputed the suit property is registered in the name of the 1st defendant as the leasehold proprietor thereof. It is also not disputed that the plaintiffs are in occupation of the suit property and that they have put temporary residential structures thereon. What is disputed is the length of time the plaintiffs have been in occupation of the suit property. On the material before me, I am not satisfied that the plaintiffs have established a prima facie case of adverse possession. The law is settled that one can only acquire adverse possession from a registered owner of land. Although the suit property was allocated to the 1st defendant in 1987, the 1st defendant was not registered as the owner of the suit property until 6/3/2014. For the purposes of Limitation of Actions Act, Chapter 22 Laws of Kenya, I am of the view that time could only start running against the 1st defendant from 6/3/2014. This suit was filed on 10/12/2015 about 1½ years from the time the 1st defendant acquired the suit property. This is short of the 12 years which is required to maintain an action for adverse possession. In any event, there is also no evidence that the plaintiffs have been on the suit property for 12 years. There is no evidence that the structures that have been put up by the plaintiffs on the suit property were put up in 1986 as claimed by the plaintiffs. The 1st plaintiff who claims to have a permanent structure on the suit property did not place any evidence of approval of the said structure which would have given the court an indication as to when the said building was put up.

Having concluded that the plaintiffs have not established a prima facie case with a probability of success, it is not necessary for me to consider whether the plaintiffs would suffer irreparable injury which cannot be compensated in damages if the orders sought are not granted. The upshot of the foregoing is that the plaintiffs have not met the threshold for granting an order for a temporary injunction. The Notice of Motion dated 10th December, 2015 has no merit. The same is dismissed with costs to the 1st defendant.

Delivered and Dated at Nairobi this 4th day of October 2018

S. OKONG’O

JUDGE

Ruling read in open court in the presence of:

.....for the Plaintiffs

.....for the 1st Defendant

.....for the 2nd Defendant

.....Court Assistant