



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUSIA

ELC. NO. E005 OF 2021

IN THE MATTER OF LIMITATION OF ACTION CAP 22 OF THE LAWS OF KENYA

AND

IN THE MATTER OF L.R. NO. SOUTH TESO/CHAKOL/1126

AND

IN THE MATTER OF A CLAIM OF ADVERSE POSSESSION

BETWEEN

VINCENT PADE OLOO.....APPLICANT

VERSUS

GEORGE OTENGE OPILI

AGNESS KURESIA OPILI (being the

Administrators of the Estate

of Sebastian Emojong Opili(Deceased).....RESPONDENT

RULING

1. The Applicant brought an application dated 11th February 2021 under Order 40 of the Civil Procedure Rules, Section 3, 3A and 63(e) of the Civil Procedure Act, 2010 and any other enabling provisions of the law seeking for the following orders;

a. Spent

b. Spent.

c. That the O.C.S Adungosi Police Station do assist in effecting this order.

d. That an interim order of injunction be and is hereby issued restraining their agents, servant and or any from alienating, felling, transferring, constructing, leasing in any way interfering with 3 ½ acre of L.R. NO. SOUTH TESO/CHAKOL/1126 pending hearing and determination of this suit.

e. That costs of this application be borne by the Respondent.

2. The application is supported by the affidavit of Vincent Pade Oloo and on the following grounds;

i. That the Applicant has been in actual possession/occupation of the 3 ½ acres of L.R. NO. SOUTH TESO/CHAKOL/1126 for over 17 years now.

ii. That the respondents are threatening the Applicant with eviction and demolition of his house and has so far cut down tree plantation of the applicant.

iii. That it is paramount that this Honourable Court do issue restraining order of injunction so that this matter can be heard and determined on merit.

iv. That the Respondents would suffer no prejudice if this application is allowed.

v. That this application has been brought in good faith and in the interest of justice.

3. The Respondents filed a Replying Affidavit dated 3rd March 2021 where the 1st Respondent swore the affidavit on his behalf and the 2nd Respondent's affidavit. He deposed that the suit is likely detrimental in the event that the orders sought are granted. He stated that the Applicant purchased a portion from their late brother and the purchase was done before Succession of their late father's estate. He deposed that there is no evidence that they intended to evict and cut down trees belonging to the Applicant and that the Applicant has never been in a peaceful possession of the suit land as it has been entangled in cases as early as 2014. Immediately the Applicant bought the portion of land out of the suit land, there has been constant cases and issues raised regarding the exact acreage that the applicant bought showing that the ownership of land was never peaceful. He further deposed that the applicant has no sufficient reason to seek and receive the orders sought.

4. The Applicant filed a further affidavit on 15th March 2021 and he deposed that he has been in actual possession/occupation of 3 ½ acres of a part of L.R. NO. **SOUTH TESO/CHAKOL/1126** and has planted commercial trees which occupy 1 acre size of land and he has invested a lot on the portion of land and the trees are valued over 3 million shillings. The respondents are not willing to issue him a title for the acres he is occupying. He further deposed that he had lodged a complaint with the forestry department through the office of the chief in regard to the damage the respondents had caused to his trees.

5. The parties agreed to dispense with the hearing of the application by way of written submissions. The Applicant filed his submissions on 7th June 2021 which the court has read and considered. The Respondents failed to file their submissions. The principles of injunctions were enunciated in the case of **GIELLA VERSUS CASSMAN BROWN (1973) EA 358** and reiterated in the case of **Nguruman Limited versus Jan Bonde Nielsen & 2 others CA No.77 of 2012 (2014) eKLR** where the Court of Appeal held that;

“In an interlocutory injunction application the applicant has to satisfy the triple requirements to a) establishes his case only at a prima facie level, b) demonstrates irreparable injury if a temporary injunction is not granted and c) ally any doubts as to b, by showing that the balance of convenience is in his favour.

6. From the pleadings, it is not in dispute that the Applicant purchased a portion of land from the Estate of the deceased. The respondents have not denied that the Applicant is in possession of the suit land though they have stated that the possession has never been peaceful from as early as 2014. The Land buying agreement in the Applicant's list of documents shows that the applicant was sold 2 acres of land. Until the Applicant's suit is heard and determined, it is in the interest of justice that the Applicant's possession is preserved so that he is not condemned unheard.

7. The Respondents have deposed that the Applicant has not provided any evidence to show that they intended to evict the applicant or destroyed his tress. The applicant in the further affidavit attached a letter dated 30th March 2020 as V.P.O-2 in which the subject under reference is tree damage. Since both parties have interest in the suit land, it is important that the suit land is preserved in its current state until the case is heard and determined.

8. I am satisfied that there is merit in the application and **grant the orders of temporary injunction restraining the respondents, their agents, servants or any other persons alienating, felling, transferring, constructing or construct structures or interfering with 3 ½ acres of L.R. NO. SOUTH TESO/CHAKOL/1126 that is occupied by the Applicant pending hearing and determination of this suit. The O.C.S. Adungosi Police Station do assist in effecting this order.**

9. The costs of the application are ordered in the cause.

DATED, SIGNED AND DELIVERED AT BUSIA THIS 29TH DAY OF JULY 2021.

A. OMOLLO

J U D G E