

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO. E004 OF 2021 (O.S)

ISAAC OUMA KUMBA.....PLAINTIFF

-VERSUS-

PEREZ AWITI AYAMO.....DEFENDANT

RULING

Isaac Ouma Kumba hereinafter referred to as the Plaintiff has come to court vide an Originating Summon dated 12/2/2021 seeking a declaration that he is entitled to land Parcel Number Kisumu/Nyalenda "B"/1883 that he presently occupies measuring approximately 0.26 Ha by reason of his adverse possession thereof for a period of 12 years. Moreover, that the respondent's property interest in the said portion of land has been extinguished by the plaintiff's adverse possession thereof. That the Defendant is holding the land in trust for the Plaintiff.

In the Supporting Affidavit, the plaintiff states that the suit parcel of land was fraudulently acquired by one Isaya Ooko Kumba and that none of the transferees have taken possession. The plaintiff states that he has nowhere to go. He caused a caution to be placed on the land register but the same was removed by court order.

The court in Kisumu CM ELC No. 166 of 2018 granted an order of eviction. He preferred Appeal Number Kisumu No. 9 of 2019 and the same was dismissed.

Simultaneously the plaintiff filed Notice of Motion dated 15/2/2021 seeking an order of temporary injunction restraining the defendant and his agents from evicting him from the suit parcel of land pending the hearing of the suit.

In the replying affidavit, the Respondent states that the plaintiff is abusing the process of the court due to the fact that the court in Kisumu ELCC No. 131 of 2007 the High Court made a decision on ownership of the property. The High Court ordered that the caution be removed. The court in CM (ELC) No. 160 of 2018 ordered that the plaintiff deserves possession. The applicant appealed in Kisumu ELC Appeal no. 9 of 2019 which was dismissed.

I have considered the notice of motion dated 13/2/2021 and do find that granting the same will amount to granting stay of execution of a court order issued by the Learned Magistrate in Kisumu CM (ELC) 166 OF 2018 and therefore i decline to grant the same. The applicant ought to have raised issues of limitation under section 7 of the Limitation of Actions Act Cap 22 Laws of Kenya in Kisumu CM (ELC) 166 of 2018.

The applicant has not demonstrated to me that he has a prima facie case with a likelihood of success in view of the various cases that have been determined by the court. The application is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 3RD DAY OF SEPTEMBER, 2021

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2019.

ANTONY OMBWAYO

JUDGE