



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC (S.O.) CASE NO. 47 OF 2018

CATHERINE GATUTI

MARTHA NTHAMA.....PLAINTIFFS

VERSUS

CYPRIAN KOBIA MBEERIA...RESPONDENT

RULING

1. The applicants seek interim orders of injunction against the respondent over **Parcel No. MERU NORTH/ATHIGA/ATHANJA/4711** hereafter the suit land pending hearing and determination of the suit.
2. The motion is supported by grounds and supporting affidavit of **Catherine Gatuti** sworn on **16th July 2021** stating that she has been in occupation; the respondent on **15/7/2021** fenced off the suit land in an attempt to evict her and or deny her exit and entry therein; has employed security officers to enforce the forced eviction and her rights over the land are being violated.
3. The respondent oppose the motion through a replying affidavit sworn on **23.9.2021** on the grounds: that being the registered owner he has undertaken extensive developments since after he purchase of the suit land from one **M’ithana M’Thiringa**; efforts to object by the applicants during adjudication process were unfruitful; the applicants are living elsewhere but have been unlawfully encroaching on this land with no legal/color of rights; the suit herein is an attempt to delay a pending suit in Tigania Law Courts and lastly the application is an abuse of the court process. The respondent has attached a copy of a title deed issued on **12th January, 2015**.
4. The respondent relies on **Margaret Njeri Wachira –vs- Eliud Waweru Njenga (2018) eKLR** on the proposition that under **Section 26 of the Land Registration Act 2012** a title deed is prima facie evidence of ownership except on account of fraud, misrepresentation, and or illegality.
5. The respondent further submitted hi developments include a petrol station and that he lives therein with his family hence should not be restrained from accessing his registered land.
6. The basis of the suit is the originating summons dated **26th November 2018** brought under **Order 37 Rule 7 of the Civil Procedure Rules** and all other enabling provisions of the law. The applicants seek to be declared adverse possessors of the suit land as against the respondent.
7. The respondent has opposed originating summons by affidavit sworn on **4/6/2019** in which he attached annexures **marked CKM “1”** a copy of the title deed and a copy of objection proceedings **marked CK M “2”** from which he was given a go ahead to put up a petrol station on the suit land.
8. For one reason or the other it appears the applicants have not been keen in prosecuting the originating summons despite orders to comply as at **19/7/2021**. Instead of attending court for pre-trial directions on **23/9/2021** the applicants filed the instant application.
9. In **Mrao Ltd. –vs- First American Bank of Kenya Ltd. & 2 Others (2003) eKLR** the court held a prima facie case is not confined just to a genuine and arguable case. There must exist a right which has apparently been infringed by the opposite party so as to call for an explanation or rebuttal from the latter.
10. In this suit there is no dispute the respondent holds a title deed which under **Section 26 of the Land Registration Act 2012**, is to be taken as prima facie evidence of ownership except on account of inter alia acquisition through corrupt scheme.

11. Going by the pleadings herein the applicants claim is not based on any of the exceptions in the **Section 26** above, but on adverse possession. The applicants did not plead the respondent's title deed herein is held in trust for them but rely on long possession and occupation on the suit land which facts are denied by the respondents.

12. This court is yet to declare the rights of the applicants as adverse to those of the respondent.

13. In the premises, the applicants have not established a prima facie case with a probability of success. Further the applicants have also not demonstrated they stand to suffer irreparable loss and damage which cannot be compensated by way of damages. The balance of convenience also tilts in favour of not granting the injunction. The notice of motion dated **16th July 2021** is hereby dismissed with costs.

14. Parties are however given the very last chance to comply with **Order 11** within **45 days** failure of which the originating summons shall stand dismissed for non-compliance.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 27TH DAY OF OCTOBER, 2021

In presence of:

Mugira M. for Mbaabu Inoti for defendant

Ondieki for plaintiffs

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE