



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC NO.12 OF 2021 (OS)

IN THE MATTER OF LAND PARCEL TITLE NO. MOIBEN/MEIBEKI/BLOCK.9 (BARSOMBE) 192

AND

IN THE MATTER OF LIMITATION OF ACTIONS ACT CAP, 22 LAW OF KENYA

BETWEEN

JULIUS KIPTOO KORIR.....PLAINTIFF/APPLICANT

AND

JULIUS KARANJA MWAURA.....1ST DEFENDANT/RESPONDENT

GEORGE NDUNGU CHEGE.....2ND DEFENDANT/RESPONDENT

LUCY NJOKI CHEGE.....3RD DEFENDANT/RESPONDENT

KIMAIYO KIPSANG MOSES.....4TH DEFENDANT/RESPONDENT

(As Personal Representatives, Beneficiaries and Creditors of the Estate of WANJIRU MWAURA (DECEASED))

RULING

1. This is a ruling in respect of a Notice of Motion dated 14th June,2021 in which the Applicant seeks the following orders:-

1) Spent

2) Spent

3) That this honourable court be pleased to issue a conservatory Order to preserve land parcel **MOIBEN/MOIBEKI BLOCK 9 (BARSOMBE NYAKIAMBI)192** from transmission, forceful entry, destruction of fence or crop on the suit land pending the hearing and determination of this suit.

4) That the cost of the application be provided for.

2. The Applicant filed an originating summons seeking orders that he had acquired part of LR.NO. MOIBEN/MEIBEKI BLOCK 9 (BARSOMBE NYAKIAMBI)192 (Suit property) by way of adverse possession. He contemporaneously filed a Notice of Motion in which he seeks the orders specified in paragraph 1 (one) hereinabove.

3. The Applicant contends that in 1992, the registered owner of the suit property abandoned the same. He moved into the suit property and occupied it in 1992. In 2004, the beneficial owners came back and they agreed to sell to him a portion measuring 3.5 acres. He paid for 3.5 acres but the registered owners went away without effecting the transfer of the purchased portion.

4. The Applicant later learnt that the registered owner had died and that the process of succession had commenced. The administrators of the estates of the registered proprietors came in the company of police and the area chief and carried out subdivision without involving him. It is on this basis that he is seeking an order to preserve the suit property from being transmitted to the beneficiaries of the registered

proprietors.

5. The respondents are said to have been served through the are assistant chief and the others personally but they neither entered appearance nor filed any grounds of opposition or replying affidavit.

6. I have gone through the Applicant's application as well as the submissions by the Applicant. Though this application is unopposed, the court must be satisfied that the Applicant has met the threshold for grant of conservatory orders. The Applicant has opted to seek conservatory orders as opposed to injunctory orders. Conservatory orders are ordinarily given in constitutional petitions.

7. In the instant case, the Applicant is seeking to be declared as having acquired a portion of the suit property by way of adverse possession. It is important to note that the registered owner of the suit property is Wanjiru Mwaura who died on 7th August, 1990. The process of succession began in 2020. Grant of letters of administration were given on 16th February, 2021.

8. Thereafter the process of confirmation of grant commenced and the estate of the deceased has been distributed. The Applicant contends that he purchased a portion measuring 1.75 acres from Samwel Chege Mwaura on 28th February, 2004 and a similar portion of 1.75 from Julius Karanja Mwaura on 8th October, 2004 making a total of 3.5 acres. As at this time, the process of succession had not started. The chief who is alleged to have witnessed the alleged sale is one Paul K. Sang of Barsombe location. This is the same chief who in 2020 identified the beneficiaries of the estate of the late Wanjiru Mwaura in a letter dated 23rd January, 2020. It is this same chief who in the company of police assisted surveyors to enter the suit property and carry out subdivision. There is something which is not adding up.

9. The Applicant appears to have been ejected from the suit property which has already been distributed to the beneficiaries including one who appears to have been a purchaser of 3 acres of the suit property. In the circumstances, the Applicant has not demonstrated that any of his constitutional rights have been violated or threatened with violation as to call for grant of conservatory orders. I therefore find no merit in this application which I dismiss with no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 11TH NOVEMBER, 2021

E.O. OBAGA

JUDGE

IN THE VIRTUAL PRESENCE OF;

MR. MARITIM FOR APPLICANT

COURT ASSISTANT – MERCY

E.O. OBAGA

JUDGE