



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ORIGINATING SUMMONS NO. E007 OF 2021

ROBERT MUTHURI CHARLESPLAINTIFF

VERSUS

TIMOTHY MWINGIRWA MUTIGA.....1ST DEFENDANT

JOHNSON KOOME MUUNGU2ND DEFENDANT

RULING

1. Through an application dated 18.1.2021 the applicant seeks temporary orders of injunction barring and restraining the defendants from interfering with his quiet occupation and use of **Parcel L.R No's Uringu 11/1633 and 2519** pending hearing and determination of the suit. The application is supported by an affidavit sworn on 22.12.2020.
2. The basis of the injunction is that the applicant has been in occupation of the land for over fifty years with permanent developments thereon. However it is alleged the defendants fraudulently caused the parcels to be demarcated under their names as per the attached certificate of search. The plaintiff has also attached copies of letters evidencing occupation.
3. Further, it is stated the plaintiff has no other home and fears an eviction is imminent unless the court grants the orders sought.
4. The applicant by way of an originating summons dated 18.1.2021 claims adverse possession for the uninterrupted occupation of the suit land since the 1960's.
5. The respondents oppose the motion through a replying affidavit sworn by Timothy Mwingirwa Mutiga on 12.2.2021. It is claimed that another similar suit **No. Meru High Court J.R No. 70 of 2010** was brought by the applicant's clan members over the suit which ordered the rehearing of A/R objection afresh. A decision was thereafter made on 18.8.2020 in his favour.
6. Further, it is averred the applicant has claims to being in one of the clan members' house so as to make the court believe hold some possessory rights over the suit land which is not true.
7. Again, the respondent submits his late father had also an **Arbitration Board Case No. 5/1980** in which he succeeded against the plaintiff's clan mates.
8. Whereas the respondents entered appearance, they are yet to reply to the originating summons.
9. Be that as it may for a party to be entitled to a temporary injunction, he has to establish a prima facie case with a probability of success. The party must establish they would suffer irreparable loss and damage incapable of being compensated by way of damages and lastly a balance of convenience should tilt in favour of granting the injunction.
10. The applicant's claim is based on adverse possession out of the alleged long and uninterrupted occupation which is alleged to have been notorious and open. The replying affidavit to the notice of motion indicates the suit land is ancestral land from a clan known as **Bothanja** and which the applicant's clan has had several suits over the same as admitted by the 1ST respondent.
11. Additionally the respondents state the applicant and his clan mates entered into his land by force after the death of his late father due to his absence and hence alleges the plaintiff has filed the claim as a proxy.
12. Given the foregoing, my considered view is that the applicant has some legitimate claim over the suit land and which entitles him to lay some relief to preserve it.

13. In the circumstances and for the interest of justice, I order the status quo subsisting at the moment be maintained as at the time of filing this originating summons for a period of one year only.

14. The originating summons be listed for case conference within 45 days from the date hereof.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 15TH DAY OF DECEMBER, 2021

IN PRESENCE OF:

GICHUNGE FOR PLAINTIFF/APPLICANT

GAKUYA FOR 1ST DEFENDANT/RESPONDENT

COURT ASSISTANT - KANANU

HON. C.K. NZILI

ELC JUDGE