



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KISUMU**

**ELC. CASE NO. 72 OF 2017 (O.S)**

**IN THE MATTER OF THE LAND REGISTRATION ACT 2021 (CAP 284) LAWS OF KENYA**

**AND**

**IN THE MATTER OF SECTION 38 OF THE LIMITATION OF ACTIONS ACT (CAP 22) LAWS OF KENYA**

**BETWEEN**

**JACOB EVANS JONANI.....APPLICANT**

**AND**

**JAIRO GUMBA AGENGO.....1<sup>ST</sup> RESPONDENT**

**JAIRO GUMBA AGENGO (being sued as the administrator of the estate of**

**PAULO AGENGO OTIENDE – Deceased).....2<sup>ND</sup> RESPONDENT**

**PAUL OTIENO ONYANGO.....3<sup>RD</sup> RESPONDENT**

**RULING**

Jacob Evans Jonani, (**hereinafter referred to as the applicant**) seeks orders that A temporary injunction do issue against the Respondents, their employees, workers, agents and/or whomsoever jointly and severally restraining them from entering into, constructing, alienating, selling, cutting down trees and/or interfering whatsoever with the Applicant's possession of land parcel number Kisumu/Nyahera/2213 pending the hearing and determination of this suit. That the costs of this application be provided for.

The application is based on grounds that the applicant is the bona fide owner of land parcel no. Kisumu/Nyahera/2213 by virtue of having a claim of adverse possession against its registered owners. The Applicant has been living on the whole parcel of land enjoying peaceful, quiet and uninterrupted possession for over 12 years. The Applicant lodged an adverse possession claim against the Respondents herein. The Respondents now intend to evict the Applicant from the suit parcel of land. The Respondents' actions are aimed at frustrating the Applicant. It is therefore necessary to prevent the Respondents from cutting down the trees of the Applicant on the suit land.

The applicant laments that if the interim orders are not granted, the Applicant will be extremely prejudiced in that he has invested heavily on the trees. The applicant gives an undertaking as to damages and is willing to abide by the conditions that the court will impose on him to issue injunctive relief. It is only just and fair that this application be allowed.

The application is supported by the affidavit of the applicant where he states that the suit parcel of land belongs to the applicant by virtue of adverse possession. He bought the parcel of land in 1993 for Kshs. 45,000/= however the land was unlawfully transferred to 1<sup>st</sup> Defendant. The applicant is in possession of the suit land and that there is no order of the court for eviction of the applicant. The applicant states that the respondents have been harassing him and cutting trees on the suit land. The applicant is willing to undertake to pay damages.

The 1<sup>st</sup> Respondent filed a replying affidavit whose gist is that he is the registered owner of the suit property and that he is in possession. He bought the portion of land from the original owner. The parcel of land was created from the 1<sup>st</sup> respondent's parcel which was subdivided to create Kisumu/Nyahera/2212 and Kisumu/Nyahera/2213.

The 3<sup>rd</sup> Respondent states that the applicant filed Kisumu ELC Miscellaneous 140 of 2013 (O.S) and applied for restraining orders but the application was dismissed and the same has not been reverted. This application is similar to the application filed in Application number 140 of 2013 (O.S). When he purchased the land, the same was not occupied. He states that this suit was dismissed on 30/5/2018 and therefore it does not exist. The applicant has never been in occupation of the land parcel number Kisumu/Nyahera/2213.

I have considered the application and submissions on record and do find that this suit was dismissed on the 30/5/2018 and there being no order reinstating the same, the court cannot issue any orders on a non-existent suit. The upshot of the above is that the application is struck out until the application reinstating dated 12/11/2019 is heard and determined.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 2<sup>nd</sup> DAY OF DECEMBER, 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 15<sup>th</sup> March 2020.

**ANTONY OMBWAYO**

**JUDGE**