



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MILIMANI

ELC NO. 562 OF 2018 (O.S)

SHEDRICK AKUYANGA AMUHAYA.....1ST PLAINTIFF/APPLICANT

ERICK BOB OYUGI.....2ND PLAINTIFF/APPLICANT

JOSEPH KARIUKI MWANGI.....3RD PLAINTIFF/APPLICANT

PIUS MWALA KATISO.....4TH PLAINTIFF/APPLICANT

DAVID GITHIOMI.....5TH PLAINTIFF/APPLICANT

=VERSUS=

JOHN FRANCIS ROURKE.....1ST DEFENDANT/RESPONDENT

WINIFRED LAURIE ROURKE.....2ND DEFENDANT/RESPONDENT

RULING

1. The Plaintiffs/Applicants filed an Originating Summons against the Defendants/Respondents seeking to be registered as owners of LR No. 2327/72 (suit property) by way of adverse possession. The Applicants contemporaneously filed an application in which they sought injunctive orders against the Respondents.

2. The Applicants contend that in 2004 the 1st Respondent gave them a contract to clear bushes from the suit property at an agreed price of Kshs.18,000/=. The Applicants proceeded to clear the bushes as agreed but the 1st Respondent did not pay them. The Applicants then moved into the suit property and occupied the houses which were there in the hope that this will exert pressure upon the 1st Respondent to pay them. In 2005 the 1st Respondent went to the suit property and asked the Applicants to move out but they did not move out as demanded.

3. The Applicants have been cultivating the suit property since 2004 until December, 2018 when some persons of Asian origin went to the suit property in the company of mean looking persons who were in the company of two police officers. The Applicants were then asked to move out of the suit property. They were served with an eviction notice which gave them seven days to move out of the suit property. It is on this basis that the Applicants are seeking injunctive orders restraining the Respondents or their agents from evicting them.

4. The Respondents who had been served with the Originating Summons as well as the application for injunction did not enter appearance or file a replying affidavit or grounds of opposition.

5. I have considered the Applicants application as well as the submissions of their counsel during the hearing of the application. The only issue for determination is whether the Applicants have demonstrated that they have a prima facie case to warrant issuance of an injunction. The Applicants state that they entered the suit property with permission of the 1st Respondent who had asked them to clear the bushes. The Applicants have since remained there with the permission of the Respondents.

6. The Applicants have annexed a copy of part of the title to the suit property. They have not annexed a certified copy of the extract of title as required. In the absence of a certified copy of extract of title and in the absence of evidence that the permission ceased, I do not see how the Applicants can claim protection by way of injunction. I find no merit in the application for injunction. I proceed to dismiss the Applicants' application with no orders as to costs.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 13th day of June, 2019.

E.O.OBAGA

JUDGE

In the absence of parties who were aware of the date and time of delivery of Ruling.

Court Assistant Hilda