



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 156 OF 2017

MOSES MUCHIRA NJERU.....1ST PLAINTIFF

STEPHEN MUGO MUTHII MWATHA.....2ND PLAINTIFF

VERSUS

FRANCIS MUREITHI.....DEFENDANT

RULING

The application before me is the Notice of Motion dated 30th March 2019 brought under **Section 1A, 1B and 3A Civil Procedure Act**. The Applicant is seeking the following orders:

1. Spent.

2. That the Honourable Court be pleased to issue an order allowing the Defendant to utilize 2 acres out of the 5 acres of portion of L.R. No. MWEA/MURINDUKO/824 pending hearing and determination of this application.

3. That the Honourable Court be pleased to issue an order allowing the Defendant to utilize 2 acres out of his 5 acres of portion of L.R. No. MWEA/MURINDUKO/824 pending hearing and determination of this suit.

4. That the Honourable Court be pleased to issue any orders to meet the ends of justice.

5. That the Plaintiffs/Respondents do pay costs.

The application is supported by grounds shown on the face of the said application and an affidavit sworn by Francis Mureithi, the Defendant herein. The said application is opposed with a replying affidavit sworn by Moses Muchira Njeru, the 1st Plaintiff/Respondent.

I have considered the application and the supporting affidavit. I have also taken into consideration the rival replying affidavit and the submissions by counsels for the parties. The Plaintiff's claim in this case is for a declaration that he has acquired the Defendant's entire land parcel No. MWEA/MURINDUKO/824 by Adverse possession and that they be registered as proprietors. The Respondent filed a replying affidavit denying the Plaintiff's claim stating that the Plaintiffs have never lived on the suit land and their claim that they have been living there for the last 23 years is therefore baseless. The Defendant further averred that he resides on the suit land after it was passed over to him by his late father. If indeed the averments by the Applicant in his replying affidavit that he resides in the suit land is true, why does he now require consent of this Court to utilize 2 acres out of the five (5) acres of the suit land? I am also alive to the claim by the Plaintiff for adverse possession which requires one to prove that he has been in actual occupation and possession of the land in dispute for a period not less than 12 years. If this Court were to allow the orders sought before the matter is heard and determined, it would prejudice the Plaintiffs claim in a substantial way. In order to remain neutral and impartial umpire, it would be better and in the best interest of justice not to make determination of issues at interlocutory stage but rather wait until the issues are resolved at the full hearing.

The orders that comments in this application is to have it dismissed which I hereby do. The costs of the application shall be borne by the Defendant/Applicant in any event. It is so ordered.

READ and SIGNED in open Court at Kerugoya this 19th July, 2019.

E.C. CHERONO

ELC JUDGE

19TH JULY, 2019

In the presence of:

1. *M/S Githaiga holding brief for Makworo*
2. *Ms Ann Thungu holding brief for Kimotho*
3. *Mbogo – Court clerk*