



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC SUIT NO. 14 OF 2019 (O.S)

REBET OMWEKA GEORGE.....PLAINTIFF

-VERSUS-

SAITOTI OLELEKUMOK.....1ST DEFENDANT

OLOIRIEN GROUP RANCH.....2ND DEFENDANT

RULING

The Defendant/Respondent had raised a Preliminary Objection on point of law at the hearing of the Plaintiff/Applicants Notice of Motion dated 27th February, 2019 in which they allege that the suit herein is defective, incompetent and bad in law and that it contravenes the provisions of Sections 7,13,17 and 38 of the Limitations of Actions Act and thus the entire suit is an abuse of the court process.

It is the Defendant/Respondent contention vide his Preliminary Objection that the Plaintiff has not been in occupation of the land for the minimum statutory proceed of 12 years as the mother title was registered on 13th November, 2015.

The Defendant/Respondent further contends that the cause of action on the land had accrued to the Plaintiff as from the time of registration of title.

The Plaintiff in his submissions to the Preliminary Objection contends that what the Defendant contends to be a Preliminary Objection is not a Preliminary Objection as the same is full of factual details that raise new facts and evidence which endeavour to rely on their replying affidavits and annextures thereon.

The Plaintiff further contend that the issues raised by the Defendant such as whether there was consent are matters of facts.

I have read the Preliminary Objection raised by the Defendants and their submissions thereon and the submissions by the Plaintiff in opposition and what is before me for determination is whether the Defendants have satisfied what constitutes a Preliminary Objection.

From the submissions of the Defendant his objection is hinged on the fact that the Plaintiff had not been in occupation of the suit land for a period of 12 years and hence he cannot plead adverse possession in respect of the suit. The Defendant states that in the instant case time starts running from the time when the title to the land was first registered and hence the suit offends the provisions of Section 7 of the Limitation of Actions Act.

What constitutes a Preliminary Objection has already been determined by court in a number of authorities and in the case of **Mukisa Biscuit manufacturing Co. Ltd -Versus-Westend Distributors Ltd(1969)EA** where the court held that the Preliminary Objection must be based on pure points of law that must not be blurred by other factual issues. In the instant case the Defendants contention that the Plaintiff has not been in occupation for a period of 12 years is not a point of law but a factual issue that is under contest by the parties. In his submissions the Plaintiff has relied on annextures on his Replying Affidavit to which in my mind clearly demonstrates that the Preliminary Objection as drafted and raised is not hinged on points of law but facts which need to be proved and thus fall short of what constitutes a Preliminary Objection and its ingredients thereof which facts can only be authenticated and the probative value addressed at a full hearing.

From the foregoing therefore I find the Preliminary objection as raised does not meet the threshold of what constitutes a Preliminary Objection and I therefore dismiss the Preliminary Objection dated 13th March, 2019 with costs to the Plaintiff.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **7TH** day of **OCTOBER, 2019**

Mohammed Kullow

Judge

7/10/19

In the presence of: -

CA:Chuma/Kimiriny

Ms Adala holding brief for the Plaintiff

N/A for the Defendants

1st Defendant present in person

Mohammed Kullo

Judge

7/10/19