



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 23 OF 2019 (O.S)**

**DAVID KAHURIA KARIMI.....APPLICANT**

**VERSUS**

**TAIPAN PROPERTY MANAGEMENT LTD.....RESPONDENT**

**RULING**

1. In the Notice of Motion dated 20<sup>th</sup> March, 2019, the Applicant has sought for the following orders:

*a. That this Honourable Court be pleased to issue a permanent order of injunction restraining the Respondent whether by themselves, agents, servants or by any other persons whomsoever, from offering for sale, selling, transferring (other than to the Applicant), charging, leasing, assigning, disposing, advertising, evicting, developing, building upon, damaging, wasting, utilizing or in any manner whatsoever from interfering with the Applicant's possession and occupation of all that piece of land known as L.R. No. 337/850 (I.R. Number 71895) pending the hearing and determination of this suit.*

*b. That the OCS Athi River Police Station be authorized to supervise the execution of this order.*

2. According to the deposition of the Applicant, he has been in open, continuous, exclusive and uninterrupted occupation and possession of Land Reference Number 337/859 (IR 71895) (the suit land) from the year 2004 and that before then, his mother-in-law had been in occupation of the suit land from 1989 until her demise in the year 2004 when she took over the occupation of the suit land.

3. The Applicant deponed that she has been cultivating the suit land since the year 2004 openly and uninterrupted and that it was not until 26<sup>th</sup> January, 2019 that a lady turned up and told him that the land belongs to the Defendant.

4. The Applicant deponed that he has acquired the title to the suit land by way of adverse possession and that unless an injunctive order is issued, he might be evicted from the land by the Respondent.

5. The Respondent did not file a response to the Application.

6. In his submissions, the Applicant's advocate submitted that the law relating to adverse possession is well settled; that time ceases to run under the Limitation of Actions Act either when the owner takes possession of land or asserts his right or when his right is admitted by the adverse possessor and that the Applicant has established a prima facie case with chances of success.

7. The facts as deponed by the Applicant in his Affidavit have not been controverted by the Respondent. Indeed, the Respondent has not rebutted the assertions by the Applicant that he (the Applicant) is currently occupying the suit land.

8. Considering that the Respondent has not denied that the Application is in occupation of the suit land, the said prevailing status quo should be maintained pending the hearing and determination of the suit.

9. For those reasons, I allow the Application dated 20<sup>th</sup> March, 2019 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 4<sup>TH</sup> DAY OF OCTOBER, 2019.**

**O.A. ANGOTE**

**JUDGE**