

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC NO. 50 OF 2018

SUMBI MALMALE.....PLAINTIFF/APPLICANT

-VERSUS-

MOSES OLE KIPENO.....DEFENDENT/RESPONDENT

RULING

The Plaintiff/Applicant had by a Notice of Motion dated 18th July, 2018 sought for an order of injunction restraining the Defendant/Respondent or his agents and servants from entering, constructing or putting up structures or interfering with the possession and occupation of parcel No. Trans Mara/Moita/199 pending the hearing and determination of the suit.

The Application was based on the grounds that the Applicant has been in occupation of the dispute property for decades without any interruption and that the Defendant/Respondent has been encroaching on the dispute parcel of land and his attempts to stop him has failed and thus contends that the substratum of the suit will be gone if he is evicted from the land. The Applicant further states that even though he is in occupation of the land the same is registered in the name of the Defendant/Respondent the grounds upon which the Application is further supported by the affidavit of the applicant.

It is the Applicant's averments that he has been in occupation of the suit parcel of land for decades even before demarcation started and it was during the demarcation exercise that he was shown the suit land and has been living on the same but he later learnt that title to the land was issued to the Defendant/Respondent and that on the 2nd day of July, 2018 the Defendant attempted to enter the land to evict him from the same.

The Application was opposed by the Defendant/Respondent in which he contends that he is the registered proprietor of the suit land and was issued with a title to the said land on 9th January, 2018. He states that the suit land has been vacant and unoccupied.

I have read the application before me and the submissions filed by counsel. This is an Application with discretionary orders of injunction the grounds upon which an injunction can be granted is now well settled. As whether the applicant has established a prima facie case with probability of success, whether damages will be adequate compensation and in whose favour the balance of convenience tilts. From the pleadings the applicant's claim is based on adverse possession which I will not define at this stage but suffice to say that he has been in occupation of the land for decades and it was in July, 2018 that the Respondent attempted to move to the land and remove his portion that the Applicant has satisfied the grounds for the grant of the orders of injunction and consequently I will allow the Notice of Motion dated 18th July, 2018.

DATED, SIGNED and DELIVERED in open court at NAROK on this 17TH day of DECEMBER, 2019

Mohammed Kullow

Judge

17/12/19

In the presence of: -

CA:Chuma/Kimiriny

N/A for the parties and their advocates