



**REPUBLIC OF KENYA**  
**ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 156 OF 2017**

**MARY ATIENO OHAGA.....APPLICANT**

**VERSUS**

**MICAH ONDIEKI.....1<sup>ST</sup> RESPONDENT**

**LIYAVO FARMERS CO-OP SOCIETY LTD.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

1. The application dated 26/9/2017 seeks an order of temporary injunction to restrain the respondents or their agents from trespassing into or in any other manner interfering with the parcel of land known as **Liyavo/215** pending the hearing and determination of the application. Interim orders were issued on 26/9/2017 but the same have never been extended.

2. The grounds upon which the application is made are that the applicant is the owner of the suit land and the 1<sup>st</sup> Respondent has issued a letter to him indicating that he wishes to have a survey carried out in respect of the suit land.

3. The applicant therefore avers that she is apprehensive that the respondents may enter into dealings that may interfere with her interest in the suit land which she had been in occupation of since the year 1977. She urges that she has a prima facie case with high probability of success and that in any event she cannot be adequately compensated by an award of damages if the defendants interfere with the suit land.

3. The application is supported by the sworn Affidavit of the Applicant. In that affidavit she states that the late Ohaga Ogol was her husband; that the couple took possession of the suit land around the year 1977; that at the time of her husband's demise he had not secured a title deed; that she has been in uninterrupted and peaceful possession of the land; that her occupation of the land has been open and adverse to the 1<sup>st</sup> and 2<sup>nd</sup> defendants and the respondent's title to the land has been extinguished that the title to the suit land ought to be transferred to her as the respondents have lost the right to claim the land by virtue of limitation; and that a vesting order should issue from this court, vesting ownership of the land to her.

4. The application is opposed by the 1<sup>st</sup> respondent who filed his sworn affidavit dated 4/10/17. What comes out of his depositions is that he is the director of **Akulwa Farms Limited** which owns all that land parcel known as **Trans Nzoia/Liyavo/1** measuring about 40 Ha and that the land known as **Liyavo/215** borders **Trans Nzoia/Liyavo/1**.

5. He accuses the applicant of encroaching on land belonging to Akulwa Farms Limited comprised in title No. Trans Nzoia/Liyavo/1 and states that he reported the trespass to the local Chief who referred the parties to the office of the County Surveyor. The County Surveyor visited the land in order to verify the problem and pointed out the proper location of the boundaries between the two land parcels. However the County Surveyor promised to fix the beacons on a future date upon the parties' payment of the relevant survey fees. Later the County Surveyor wrote to the parties to notify them that he would be visiting the land to fix beacons on 16/9/2017 which date was rescheduled to 27/9/2017 but instead of waiting the applicant filed the instant suit.

6. The 1<sup>st</sup> defendant avers on oath that he has no interest in Liyavo/215 which he recognizes openly as owned by the husband to the plaintiff/applicant. It is also averred that the applicant has no capacity to institute the present suit in her own name as the land is in her late husband's name and she can only come to court as administrator of the deceased's estate. A "*reaction*" to the 1st Respondent's affidavit, which was filed in the record by the 2nd respondents' Secretary confirms that the plaintiff and her late husband owned Liyavo/215 and that they have stayed on the said plot without interference for long.

7. The 1st respondent filed a second affidavit on 1/12/2017 with a sketch map annexed showing the area he considers as encroached upon by the plaintiff.

### **Determination**

9. In my view the main issue in this application is whether a temporary injunction should issue. As submitted by the 1st respondent, the Originating Summons shows that the plaintiff therein seeks to be declared owner of LR Liyavo/215 and not Trans Nzoia/Liyavo/1. The plaintiff is seeking to be declared owner by way of adverse possession of a parcel owned by her late husband. I therefore do not find any good ground upon which to find that the plaintiff has a prima facie case against the defendants at the moment or that she would suffer irreparable injury that may not be compensated by way of damages if orders sought do not issue

10. Consequently, I hereby dismiss the application dated 26/9/2017 with costs to the 1st Respondent only.

Dated, signed and delivered at Kitale on this **30<sup>th</sup>** day of **January, 2018**.

**MWANGI NJOROGE**

**JUDGE**

**30/01/2018**

Coram - Before Mwangi Njoroge Judge

Court Assistant - Isabellah

Mr. Bisonga holding brief for Okara for plaintiff

Defendant in person present

Erastus Muturi Secretary. Liyavo Farmers present

Plaintiff present

**COURT**

Ruling read in open court in the presence of Counsel for the plaintiff and the defendants in person.

**MWANGI NJOROGE**

**JUDGE**

**30/01/2018**