



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 105 OF 2016

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF ADVERSE POSSESSION

AND

IN THE MATTER OF LAND PARCEL NO. KEIYO/MARAKWET/IRONG/KAPKONGA/117

AND

IN THE MATTER OF LIITATION OF ACTIONS ACT CHAPTER 22, LAWS OF KENYA

AND

IN THE MATTER OF THE CIVIL PROCEDURE RULES OF KENYA, 2010

AND IN THE MATTEER OF THE LAND REGISTRATION ACT, ACT NO. 3 OF 2012

AND IN THE MATTER OF AN APPLICATION BY:

COSMAS CHERONO.....1<sup>ST</sup> APPLICANT

WILLIAM CHERONO.....2<sup>ND</sup> APPLICANT

BRIAN RONO.....3<sup>RD</sup> APPLICANT

VERSUS

VERONICAH CHERONO.....RESPONDENT

**RULING**

**Cosmas Cherono, William Cherono and Brian Rono, (hereinafter referred to as applicants)** have come to court against **Veronicah R. Cherono, (hereinafter referred to as the respondent)** praying for a temporary order of injunction restraining the respondent and agents from trespassing, encroaching, ploughing, altering records from the register of parcel No. Irong/Kapkonga/117 and doing anything prejudicial to the rights of the applicants pending hearing of the suit. Moreover, the applicants pray for stay of proceedings in Iten SPMCC No. 10 of 2014 and that the suit be transferred to this court for determination.

The application is based on grounds that the plaintiffs have occupied the land since 1960. That the Land Registrar intends to remove a caution lodged by the 1<sup>st</sup> applicant. That the defendant intends to subdivide the land. The application is supported by the affidavit of Cosmas Cherono who deposes on his behalf and on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> applicants. The applicants state that they are in occupation of land registration number Irong/Kapkonga/117 since 1960. The respondent is the wife of their late brother who obtained title through transmission. Their late brother was registered as trustee for the entire family. It had been agreed that they share the land but the Land Registrar has issued a Notice to remove a caution lodged by the 1<sup>st</sup> applicant and the defendant intends to subdivide the land. This matter is pending before the Magistrate's Court as Iten SPMCC No. 10 of 2014.

The respondent filed a replying affidavit stating that the suit land belongs to the respondent and that the applicants were invited guests having been allowed by the respondent's husband to live in their mother's house built by her late husband. According to the respondent, the 2<sup>nd</sup>

applicant does not reside on the parcel of land. The respondent states that the 3<sup>rd</sup> applicant is not a brother to the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs but a son to Martin, a brother to the 1<sup>st</sup>, 2<sup>nd</sup> plaintiffs and her deceased husband. Her father in law was buried on another parcel of land. The meeting with the District Commissioner was one sided, influential and therefore, was biased as he wanted part of the land.

The indisputable facts of this matter are that the 1<sup>st</sup> plaintiff is in occupation of part of the suit property and that the 1<sup>st</sup> and 2<sup>nd</sup> applicants' mother who was the 3<sup>rd</sup> applicant's grandmother resided on the parcel of land. I have perused the proceedings before the District Commissioner and do find that the 1<sup>st</sup> plaintiff was born on the parcel of land and was brought up on the parcel of land. For the 2<sup>nd</sup> and 3<sup>rd</sup> applicants, it is not clear whether they reside on the parcel of land.

The plaintiffs have come to this court by way of adverse possession whilst in the Lower Court at Iten, the plaintiff (Veronica Cherono) filed a suit praying for eviction of Cosmas Cherono as a trespasser. Cosmas Cherono filed a defence stating that he was occupying the property as a beneficiary of a trust as their late brother, the defendant's husband held the land in trust for three families.

I do find that the plaintiffs have satisfied this court that they have a prima facie case with a probability of success which case must go on trial on a claim based on adverse possession and or trust. I do further find that the applicants, especially the 1<sup>st</sup> applicant if evicted, shall suffer irreparable harm that cannot be compensated with damages. On balance of convenience, I do find it prudent to order that status quo to be maintained pending the hearing and determination of the suit. Each party to maintain the utilization of the portion of land in occupation. The Deputy Registrar to visit the parcel of land and prepare a report on the *status quo*.

**Dated and delivered at Eldoret this 2<sup>nd</sup> day of March, 2018.**

**A. OMBWAYO**

**JUDGE**