



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KITALE
LAND CASE NO. 30 OF 2016 (OS)
IN THE MATTER OF LIMITATION OF ACTIONS
ACT CAP 22 OF THE LAWS OF KENYA
AND
IN THE MATTER OF THE REGISTERED LAND ACT KNOWN AS
CHERANGNY/KACHIBORA BLOCK 1/OSORNGAI 148 ORIGINALLY
CHERANGANY/KACHIBORA BLOCK 1/OSORONGAI/9
AND
IN THE MATTER OF ADVERSE POSSESSION
BETWEEN
CLEMENT KIMAIYO MUGUN.....PLAINTIFF
VERSUS
STANLEY KIPLAGAT BITTOK.....1ST DEFENDANT
JULIUS MALABWEN KOLUM.....2ND DEFENDANT
NORBERT KIPLETING LAGAT.....3RD DEFENDANT

R U L I N G

1. By an application dated 18/4/2016 the plaintiff seeks an order of injunction to restrain the defendant and his agents from further evicting the applicant, and from interfering with the plaintiff's use of land parcel **Cherangany/Kachibora Block 1/Osorongai/148**, which was originally part of Cherangany/**Kachibora Block 1/Osorongai/9** pending the hearing and determination of the originating summons.

2. The application is supported by the affidavit of the plaintiff sworn on 18/4/2016. The grounds therein are as follows: That he has been in occupation of the suit land for a period of seventeen years; that his

occupation was open, peaceful and without interruption, that the 1st defendant's attitude to the plaintiff changed when in 2014 the plaintiff sold a one eighth -acre plot to one Douglas Makori whereupon he sued the buyer who then demanded a refund from the plaintiff; that thereafter this suit was filed; that on being served the 1st defendant attempted to evict the plaintiff from the land; that the 1st defendant in doing so relied on the judgment of this court against Douglas Makori, the buyer who had been refunded his money; that the said judgment did not authorize the plaintiff's eviction from the premises and in any event the plaintiff was not a party to the suit and that unless order of this court issues, he would be evicted and this suit would be rendered nugatory.

3. The defendants' response is contained in an affidavit sworn by the 1st defendant and filed in court on 13/5/2016. Their defence is that the application has been overtaken by events and that the applicant has not been in uninterrupted use and possession of the suit land; that the respondent (without specify which) did not have any privity of contract over the suit land and that the plaintiff has been a resident of Laseru, in Eldoret since the year 2012.

4. On his part the 2nd respondent in his replying affidavit of 14/3/2016 acknowledges having exchanged land with the 1st respondent but states that the exchange agreement was rescinded. Both the 2nd and 3rd respondents, the latter who responded vide an affidavit he swore on 14/3/2016, state that the plaintiff was evicted from the land. The 3rd respondent also denies that the land that had been sold to the plaintiff was LR. Cherangany/Kachibora Block 1/Osorongai/148.

5. I have considered the submissions of the plaintiff filed in this matter on 31/1/2018 and the defendant's submissions filed on 14/2/2018. It is common ground that the plaintiff is not residing on the premises having been evicted earlier. I have however noted that the respondents have not commented on the sentiments of the plaintiff contained in the further affidavit he filed in this court on 6/11/2017. In that affidavit, he raise an issue as to how it was possible for the 1st respondent's family to rescind the agreement of exchange while the suit land had already passed to a third party. Further the plaintiff's concern which is reflected in the said affidavit is that the rescission did not involve him, and that issues of compensation of the plaintiff are not yet settled between the parties.

6. The documents exhibited by the parties herein do show there was some kind of transactions by virtue of which the plaintiff came into possession of the land which he has now been evicted from. These will be proved at the hearing of the originating summons.

7. It is the inclination of this court to preserve the suit land mentioned till the end of the suit. This action is mandated purely by the requirements of justice. In the case of *Giella –vs- Cassman Brown 1973 EA 358*, the rule is that when it is in doubt the court should rule on a balance of convenience.

8. In my view the balance of convenience lies in preserving the suit premises. I therefore issue an order that the suit premises shall not be disposed of or otherwise wasted by the occupants thereof or further developed by any person, until the hearing and determination of the Originating Summons herein.

Dated, signed and delivered at Kitale on this 20th day of April, 2018.

MWANGI NJOROGE

JUDGE

20/4/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Sitati for Murgor for Plaintiff/Applicant

Mr. Barongo for the Respondent

COURT

Ruling read in open court.

MWANGI NJOROGI

JUDGE

20/4/2018