



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU

E.L.C. CASE NO. 127 OF 2017

Formerly Kerugoya E.L.C. CASE NO. 85 of 2013

JOACHIM NJUGUNA MBUGUA.....1ST PLAINTIFF

JOHN NDUNGU MBUGUA.....2ND PLAINTIFF

PAUL NJOROGI MBUGUA.....3RD PLAINTIFF

VERSUS

FAUSTINO NJERU NJOKA.....DEFENDANT

RULING

1. The Plaintiffs filed an originating summons dated 7th May 2010 seeking a declaration that they had become entitled to 0.9 acres out of *Title No. Nthawa/Gitiburi/1571* (hereinafter known as the "suit property") by virtue of adverse possession.
2. The said originating summons was supported by an affidavit sworn jointly by the 1st, 2nd and 3rd Plaintiffs on 7th May 2010. They claimed to have been in exclusive, open and continuous occupation of the suit property since 1985.
3. The Plaintiffs do not appear to have taken steps to prosecute the suit for over seven years after filing suit. However, by a notice of motion dated and filed on 2nd August 2017 brought under section 68 of the Land Registration Act, 2012, section 3A of the Civil Procedure Act (Cap 21) and all other enabling provisions of the law, the Plaintiffs sought an order of inhibition to prevent the Defendant from disposing of, or in any manner dealing with the suit property pending the hearing and determination of the suit.
4. It was sworn in the affidavit in support of the said motion that the Defendant had taken several potential buyers to the suit property and that he intended to dispose of it before conclusion of the suit. The Plaintiffs claimed that they were cultivating maize on the suit property and that they had buried their late father thereon.
5. The Defendant filed a replying affidavit sworn on 4th October 2017 in opposition to the Plaintiffs' said application. He reiterated that he was the registered proprietor of the suit property. He claimed to have been in possession of the suit property all along. He did not, however, specifically deny that the Plaintiffs were cultivating maize thereon or that they had buried their late father thereon.
6. The court has considered the Plaintiffs' said application for an order of inhibition, the supporting affidavit, the Defendant's replying affidavit and the Plaintiffs' submissions. The Defendant's advocate does not appear to have filed any written submissions.
7. The court is satisfied that the Plaintiffs have demonstrated a reasonable claim with some probability of success at the trial hereof. They have demonstrated that their suit is not frivolous and as such ought to be given a chance to ventilate the claim in a full hearing. Their claim to possession was not seriously controverted. The best way of facilitating a conclusive resolution of the pending dispute is by making an order for preservation of the suit property pending the conclusion of the suit.
8. The upshot of the foregoing is that the court finds merit in the Plaintiff's notice of motion dated 2nd August 2017 and the same is hereby allowed in terms of prayer (c) thereof. The order shall remain in force for a period of **twelve (12) months** only during which the Plaintiffs shall prosecute the suit to its logical conclusion. Costs of the application shall be in the cause.
9. In view of the age of the suit, the court shall give directions on the hearing of the suit at the time of delivery of the ruling. The court notes that this is an old suit which ought to have been dismissed much earlier for want of prosecution under **Order 17 of the Civil Procedure Rules**.

10. Orders accordingly.

RULING DATED, SIGNED and DELIVERED in open court at EMBU this 24th day of MAY 2018

In the presence of Ms Mutegi holding brief for Mr Momanyi and in the absence of the Plaintiffs.

Court clerk Muinde.

Y.M. ANGIMA

JUDGE

24.05.18