



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 516 OF 2017

IN THE MATTER OF THE LIMITATION OF ACTIONS ACT

AND

IN THE MATTER OF LAND PARCELS REF. NO. TRANS MARA/ISAMPIN/92

BETWEEN

NARIKURMURANI SHAL.....APPLICANT

-VERSUS-

LETINGUI OLE SAIYIALEL.....RESPONDENT

RULING

The Application before me is the Notice of Motion dated 21st July, 2017 in which the Plaintiff inter alia sought for orders of injunction restraining the Respondents from evicting, alienating, disposing the Applicant from Land Parcel Reference No. **TRANS MARA/ISAMPIN/92**. The Application was supported by the Affidavit of the Plaintiff as no grounds in supporting of the same was stated by the Applicant.

In his supporting affidavit the Applicant has been in continuous occupation of the suit land since 1994 when the Plaintiff came claiming that he is the Registered Owner of the land.

The Applicant avers that she has put her matrimonial home on the property and that it was only in 2013 that the Respondent claimed to have title on the suit land.

The Respondent has opposed the application and filed a replying affidavit where he avers that it is the Applicant who has trespassed on his land. He stated that he sold the land to Trans Mara Sugar Company Limited and hence he is wrongly enjoined in the proceedings.

When the application came for hearing before me the parties agreed that the same shall be disposed of by way of written submissions but despite being given the chance neither of the parties filed and I therefore relied on the pleadings.

At this juncture what is there for determination is whether the plaintiff has established a prima facie case with a probability of success and whether damages will be adequate compensation.

The suit here relates to a parcel of land where the Applicant states that she is in occupation of the suit land and has matrimonial home on the same. The respondent in his replying affidavit stated that he has sold his land to a third party and he is thus sued wrongly.

From the pleadings before me, I find that the Applicant has established a prima facie case with a probability of success. She is in actual possession and has her matrimonial home. I will grant her the orders sought so as not to disrupt her normal process since the Applicant states that he has no interest on the suit land.

From the foregoing therefore I will allow the application dated 21st July, 2017 with costs.

DATED, SIGNED and DELIVERED in open court at NAROK on this 4TH day of MAY, 2018

Mohammed Noor Kullow

Judge

4/5/18

In the presence of:

Mr Shem Khayo holding brief for Nyauki for defendant/respondent

Ms Cheptoo holding brief for Otieno for the applicant

CA:Chuma

Mohamed Noor Kullow

Judge

4/5/18