



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO.201 OF 2017

MONICAH WANJIKU THUO & 2 OTHERS.....APPLICANTS

=VERSUS=

PATRICIA WANJIKU MWAURA

(Sued as the Personal Representative /Administrator of the

Estate of the Late Paul Mwaura Thuo (Deceased).....RESPONDENT

RULING

1. This is a ruling in respect of a Notice of Motion dated 11th December, 2017 brought by the Applicants which seeks the following orders: -

1. Spent

2. Spent

3. That this Honourable Court be pleased to grant leave to the duly appointed personal representative /administrator of the 1st Applicant, Monica Wanjiku Thuo, to join and represent her estate in prosecuting her claim in these proceedings and that parties do amend pleadings accordingly.

4. That the Honourable Court be pleased to issue an order preserving the three suit properties herein and or a temporary injunction restraining the respondent whether by herself ,her servants, agents ,representatives and or employees or anyone claiming under her name howsoever from transferring ,alienating, charging, offering for sale, disposing off, forcefully evicting the applicants herein and or in any way interfering with the three suit properties herein being plot number 593 Ng'undu farmers Co.Ltd,Plot L.R No.209/975/53 Mathare and plot number 466 Cieko Estate Kasarani or any part thereof pending the hearing and determination of the suit herein.

5. That the costs of this application be borne by the Respondents.

2. This application arises from an Originating Summons filed by three Plaintiffs namely Monica Wanjiku Thuo (Deceased), Julius Joseph Gitau Njuguna and Beatrice Wambui Njuguna who are seeking to be registered as owners of plot No. 593 Ngundu Farmers Co. Ltd, Plot No. 209/975/53 Mathare and Plot

No. 466 Cieko Estate in Kasarani (suit properties) by way of adverse possession. At the time of filing of this application though the deceased had died, there was no legal representative in respect of her estate. However, subsequent to the filing of this application, Julius Joseph Gitau Njoroge has obtained limited grant of letters ad litem in respect of the Estate of the deceased limited to only prosecuting pending suits.

3. The deceased was a sister to the late Paul Mwaura Thuo (Mwaura) who had a number of properties. Julius Joseph Gitau Njuguna is the deceased's son whereas Beatrice Wambui Njuguna is daughter in-law to the deceased by virtue of marriage to Julius Joseph Gitau Njuguna. The later Mwaura died on 24th March, 1994. Following the death of Mwaura, there followed a protracted succession battle filed in Nairobi HCCC Succession Cause No.1332 of 1994.

4. The Respondent was finally granted Letters of Administration in respect of the estate of late Mwaura in 2011. The grant was confirmed on 20th January, 2017. It is after the confirmation of grant in favour of the Respondent that the deceased and her son and daughter in-law filed the present originating summons claiming that they were entitled to the suit properties by way of adverse possession.

5. The deceased and two applicants had preferred an appeal against the confirmation of grant in favour of the Respondent. They also applied for stay pending hearing of their appeal. The deceased, however, died before the ruling which was delivered on 24th November, 2017 dismissing the application for stay. It is after the dismissal of the application for stay in the Court of Appeal that the applicants filed the present application. The applicants contend that if an order is not granted preserving the suit properties, the Respondent may move to evict them and or even sale the suit properties as she now has the power to do so the grant having been confirmed in her favour.

6. The Applicants contend that they have been on the suit properties for over a period of 23 years and if the Respondent was to move and evict them, they will suffer irreparable loss as they have done extensive developments to the suit properties.

7. The Respondent has opposed the application through a replying affidavit sworn on 30th January, 2018. The Respondent contends that the applicants' application is frivolous, vexatious and is an outright abuse of the process of the court. The suit properties are part of the estate of the late Mwaura. The Applicants have engaged her and her later mother in endless litigation since 1994. The second applicant has been collecting rent from the Mathare property without accounting for it.

8. The Respondent further contends that the applicants application is an abuse of the process of the court in that the Applicants previous applications for injunction and stay have been rejected and that if an injunction were to be issued it will amount to preventing her from discharging her duties as regards the estate of the late Mwaura. The Applicants started intermeddling in the estate of the late Mwaura an act which is criminal under the Succession Act. On the issue of the Applicants claim for adverse possession, she contends that it has no basis given the history of how the Applicants entered the suit properties.

9. I have carefully considered the Applicants' application as well as the opposition thereto by the Respondent. I have also considered the submissions by the parties herein. This being an application for injunction or what the Applicants call order of status quo, the court has to consider whether the applicants have met the threshold for grant of either an injunction or order of status quo. An order of injunction can only be given in a case where the Applicant has established a prima facie case with probability of success. On the other hand an order of status quo is granted where there are serious conflicts of facts as for instance where two persons have presented a title each claiming one property. In the circumstances, an order of status quo is granted to preserve the property until the dispute is heard in a trial. This was the holding by the Court of Appeal in **Ougo and Another Vs Ochieng (1987) KLR 364** where it was held that where there are serious conflicts of facts, the court should order maintenance of status quo until the dispute is heard and determined in a trial.

10. In the instant case, there are no serious conflicts of facts to warrant issuance of an order to maintain the status quo. The Applicants herein are seeking to be declared as having acquired the suit properties by way of adverse possession. The history of how they entered the suit property is clear from the annexures

to the application and the replying affidavits. There has been a dispute as to who is entitled to the estate of the late Mwaura. This issue has been determined by the High Court in a Succession Cause started in 1994. From the record, it is clear that even the issue of who was to bury the body of the late Mwaura was an issue but was resolved in favour of the Respondent.

11. The issue of whether the Respondent was or was not the biological daughter of the late Mwaura has been determined and the Applicants cannot keep raising the issue and in any case this is not the forum to do so and this issue cannot in any way influence the decision on whether to grant injunction or status quo order. The respondent has been granted powers to administer the estate of the late Mwaura. She has a legal obligation to account and she cannot be accused by the applicants for not discharging her duties as it is clear that it is the Applicants who have and are seeking to prevent her from discharging that duty.

12. An injunction is an equitable remedy and whoever comes for it has to come with clean hands. In the instant case the picture being painted is one which will disentitle one to an equitable remedy. A person cannot create a certain state of affairs and then come to court seeking protection to continue with that state of affairs. It will be inequitable in the circumstances if the court were to sanction such acts by ordering an injunction or maintenance of status quo.

13. In considering what is before me, I will not delve into the issue of whether the applicants have met the statutory requirements as regards claims based on adverse possession as to do so will amount to giving final conclusions at interlocutory stage. In dealing with the issue of whether to grant injunction or status quo order, the court is not expected to give final conclusions. With this in mind and considering the materials placed before me, I do not find that the applicants deserve either an injunction or order of maintenance of status quo. I therefore, decline to grant prayer 3 of the Motion dated 11th December, 2017.

14. As I have said before in this ruling, the Applicants had not obtained grant of letters of administration in respect of the Estate of the deceased but the second applicant has since obtained the same. I will, therefore, allow Julius Joseph Gitau Njuguna to be substituted in place of the deceased. The pleadings herein shall be amended to reflect the new position. The costs of this application shall be costs in the cause.

It is so ordered.

Dated, and Signed at Nairobi on this 31st day of JULY 2018.

E.O.OBAGA

JUDGE

Delivered in the presence of :-

Mr Kirimi for Mr Awino for the Respondent

None appearance by the Respondents

Court Clerk: Hilda

B.M.EBOSO

JUDGE