



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC CASE NO. 68 OF 2018

PATRICK MAGOTO YANO.....PLAINTIFF

VERSUS

PAULO KIPWAMBOK KOSGEL.....1ST DEFENDANT

PAULINE WANJIKU WATHIKU.....2ND DEFENDANT

JANET NASAMBU FWOTI.....3RD DEFENDANT

R U L I N G

1. The application dated **23rd July 2018** seeks an injunction to restrain the defendants from interfering in any way with the parcel of land known as **Makutano/Suwerwa Block 1 /Bwake /191** pending the hearing of the suit. It is based on the grounds at the foot thereof, that is, that the plaintiff is the legal owner of the suit land, that the 1st and 2nd defendants transferred the suit land to the 3rd defendant, that the 3rd defendant has tried to encroach on the suit land, that if the plaintiff is fully evicted evidence of his lengthy occupation would be destroyed and he would suffer loss that can not be compensated for by way of damages.

2. In his supporting affidavit the plaintiff admits that the 1st defendant was originally the registered owner of the suit land before transfer of the same to the 3rd defendant. The land was charged to the **Agricultural Finance Corporation(AFC)**. The 1st defendant sold the land to the 2nd defendant in **1995**. Due to the pendency of the charge the 2nd defendant could not obtain title in her name. The AFC wanted to realize the security and the 2nd defendant paid the charge amount. This amount was however raised by way of sale of the land to the plaintiff, and the purchase sum was paid to the AFC. A copy of the alleged sale agreement is attached to the affidavit. It bears the date of **29/6/2001**. By that agreement it is apparent that the 2nd defendant is selling the suit land to the plaintiff. The plaintiff has averred that he took possession of the suit land and erected a structure thereon and has a caretaker thereon and that he has occupied it for more than 17 years. An affidavit by the caretaker is attached in evidence of such long occupation. One of the defendants came with a tractor and pulled down part of the entrance to the land and started building a house in such a manner that the new house would encircle the plaintiff's house. Later on the plaintiff's house was destroyed. The plaintiff's case is that his long stay on the land has extinguished the defendants' interests in the land.

3. The replying affidavit of the 1st defendant was filed on **27th July 2018**. It states in a nutshell that he sold the land to the 3rd defendant and that the 3rd defendant has been in occupation of the suit land since **2010**. He further states that he sold the plaintiff **Plot Number 205** which was erroneously described as **Plot No 191**, and when the correct plot was shown to the plaintiff, the plaintiff's brother sold the plaintiff's correct plot to a third party and the local administration has advised the plaintiff to follow up on the issue with his brother. The 1st respondent denies selling the suit land to the plaintiff. He alleges that the 3rd respondent's house has been on the land for a long time, having been constructed immediately after the purchase, and that the plaintiff has never lived peacefully on the land. The plaintiff is alleged to have refused to move to his rightful plot.

4. I have considered that the defendants have acknowledged that the plaintiff is in occupation of the suit land. The length of occupation does not matter for now. What matters is that if the court does not issue the injunction sought the plaintiff may be evicted from the suit land.

5. The plaintiff's claim lies in adverse possession. The ingredients of adverse possession would have to be proved at the main hearing of the suit if the suit proceeded to that stage.

6. For that reason I am of the view that a change in the status quo should not be allowed before the suit is fully heard. I therefore grant the application dated **23rd July 2018** in terms of **prayers Nos. (c) and (d)**.

7. The costs of the application will be in the cause.

Dated, signed and delivered at Kitale on this 25th day of September, 2018.

MWANGI NJOROGE

JUDGE

25/9/2018

Coram: Before Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Chebii for the respondents

Ms. Wangutusi for plaintiffs/applicants

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

25/9/2018