



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 13B OF 2014**

**ESTHER KAMENE KIMANTHI .....1<sup>ST</sup> PLAINTIFF**

**LYDIA KATILO MULWA .....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**CHRISPUS MAKAU KIAMBA .....DEFENDANT**

**RULING**

1. In the Notice of Motion dated 11<sup>th</sup> February, 2014, the Plaintiffs are seeking for the following orders:

***a. That pending the hearing and determination of the main suit, a temporary injunction do issue restraining the Defendant/Respondent by himself, his agent, servants or anybody claiming through him from dispossessing or alienating the Plaintiffs/Applicants from land parcel L.R. No. 337/1130 within Athi River.***

***b. That the costs of this Application be provided for.***

2. The Application is premised on the grounds that the Plaintiffs have been residing on the suit land for gain for over thirty (30) years; that the occupation of the land by the Plaintiffs has been open and as of right and that the Defendant has unlawfully moved to fence the land and destroyed the residence and the property of the Plaintiffs.

3. According to the deposition of the 1<sup>st</sup> Plaintiff, she settled on a parcel of land number L.R. No. 337/1410 Athi River with her husband in 1977; that the said land was sub-divided to create L.R. No. 337/1130; that her family together with the 2<sup>nd</sup> Plaintiff's family have developed the suit land and that they have been cultivating the land as members of Horticultural Co-operative Union Limited without any interruption.

4. According to the Plaintiffs, the Defendant's previous effort to throw them out of the land was halted by the court in HCCC. No. 140 of 2011.

5. The Defendant filed Grounds of Opposition in which he averred that the Application is premised on a suit that does not disclose a cause of action; that the Defendant is mis-suited and that from the pleadings, it is the Defendant who is in possession of the land.

6. In his submissions, the Plaintiffs' advocate submitted that his clients have been in occupation of the land since 1977; that L.R. No. 337/1410 was mysteriously sub-divided into several portions including L.R. No. 337/1130 and that in HCCC No. 140 of 2011, Dulu J acknowledged the Applicants' occupation

of L.R No. 337/1410.

7. The Defendant's advocate on the other hand submitted that HCCC No. 140 of 2011 refers to L.R. No. 337/3080; that the dispute in that matter is still pending and that the squatters who were on the suit land were relocated.

8. The Defendant's counsel submitted that the pleadings as filed by the Plaintiffs are defective because they offend the provisions of Order 37 Rule 7 of the Civil Procedure Rules and that the Plaintiffs have not demonstrated how they have been on the land for more than twelve (12) years.

9. The Plaintiffs' claim is that they have been on the suit land for more than twelve (12) years.

10. Ordinarily, suits for a claim of adverse possession are commenced by way of an Originating Summons. However, the mere fact that the Plaintiffs have commenced their claim by way of a Plaint is not fatal in view of the provisions of Article 159 (2) (d) of the Constitution and Sections 1A and B of the Civil Procedure Act.

11. According to those provisions, justice should be administered without undue regard to procedural technicalities.

12. The Plaintiffs have deponed that they have been in occupation of the land for over thirty (30) years. Indeed, the Applicants have annexed on their Affidavit receipts dating way back to 1979 showing how they used to cultivate the suit land and deliver beans to the Horticultural Co-operative Union Limited.

13. Having shown that they have always been on the suit land, the Plaintiffs should be allowed to continue occupying the suit land pending the hearing and determination of their claim.

14. Indeed, if the Plaintiffs are evicted from the suit land before the suit is heard, they will suffer irreparable damage because they will have been evicted from their place of abode at an interlocutory stage.

15. It is for those reasons that I allow the Application dated 11<sup>th</sup> February, 2014 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2017.**

**O. A. ANGOTE**

**JUDGE**