



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 325 OF 2015**

**JOSEPH KOSKEI.....PLAINTIFF**

**VERSUS**

**FRANCIS KIPNGETICH ROP.....1<sup>ST</sup> DEFENDANT**

**MARCELA CHELANGAT CHUMO.....2<sup>ND</sup> DEFENDANT**

**CHRISTINA CHEBII CHUMO.....3<sup>RD</sup> DEFENDANT**

**RULING**

**(Application for injunction; principles to be applied; plaintiff holding a licence; whether he can seek a permanent injunction given such interest; plaintiff asking for occupation for one year; no claim to the land by plaintiff; licensee holding land at mercy of title holder unless there is a contract; no law allowing plaintiff to keep possession for another one year; no prima facie case demonstrated. Application dismissed).**

1. This suit was commenced by way of plaint filed on 5 November 2015. In the plaint, it is pleaded that the plaintiff has been in occupation of the land parcel Molo South/Langwenda Block 8/152 (Cheptagum) and has been in occupation since 1979 without any interruption, which is a period of 36 years. He has pleaded that his occupation has been at the behest of the owner, one Kipro arap Chumo (deceased). He has averred that he has developed the land by building residential structures after clearing the bushes, has planted about 120 trees and generally carries agricultural activities on this land.

2. It is pleaded that about 30 September 2015, the defendants in the company of some strangers, came to the land and informed the plaintiff that they have come to sell the land. They demanded immediate vacant possession and on 2 October 2015, the plaintiff was served with a seven days notice to harvest and remove all his trees. There was no mention of the other developments. It is averred that the plaintiff's attempts to request for adequate notice only led to a further violation of his fundamental rights, persistent waste of the land, threats of eviction, and destruction of all the developments therein. The following particulars are pleaded against the defendants :-

*(a) Cutting down trees to pave way for the new owners.*

*(b) Putting up fences to demarcate the property.*

*(c) Spraying the grass with herbicide to pave way for easy ploughing.*

(d) *Inviting neighbours to graze their animals on the land without the plaintiff's permission/consent .*

(e) *Threatening to cut down more trees.*

(f) *Ploughing part of the land.*

(g) *Denying the plaintiff the use/access of his land.*

3. It is pleaded that the defendants have threatened the plaintiff with dire consequences if he does not cut down all the trees, both mature and young, as they purport to have sold the land to third parties.

4. The plaintiff contends that he has been in occupation for over 36 years and no reasonable notice has been given to him to vacate and no consideration has been made of the developments that he has made. He has pleaded that the defendants have subjected him to untold suffering and inconvenience.

5. In the suit, the plaintiff wants the following orders :-

(a) *A permanent injunction restraining the defendants by themselves, their agents/ servants from evicting the plaintiff from the land known as Molo South/Langwenda Block 8/152 (Cheptagum).*

(b) *A restraining order against the defendants from unlawfully destroying the trees and thereby degrading the environment.*

(c) *Costs of this suit.*

6. Together with the plaint, the plaintiff filed an application under Order 40 Rule 1, and Sections 3 (3), 1A, 1B and 3A of the Civil Procedure Act. That application is the subject of this ruling and seeks the following principal order :-

*That a temporary injunction do issue against the defendants by themselves, her agents, employees, servants or any one claiming through them restraining them from selling, alienating, disposing, cultivating, cutting down trees, evicting the plaintiff or carrying out any other dealings in any way that will interfere with the plaintiff's quiet possession of all that land known as Molo South/Langwenda Blok 8/152 pending the hearing and determination of this suit*

7. Despite being served with summons and the application, the defendants have not entered appearance and have filed nothing to oppose the motion. That does not however mean that I must automatically allow the application. I still need to assess whether the application is merited.

8. It will be noted that the application is one for injunction and I stand guided by the principles laid down in the case of ***Giella vs Cassman Brown (1973) EA 358***. In the said case, it was held that to succeed in an application for injunction, one needs to demonstrate a prima facie case with a probability of success, and also show that he stands to suffer irreparable loss if the injunction is not granted. If in doubt, the court will decide the application on a balance of convenience.

9. In order to assess whether or not one has presented a prima facie case with a probability of success, it is inevitable that a preliminary inquiry of the case of the applicant be made. This is preliminary, only for purposes of making a determination on the application, and the court is not bound by any findings made at this stage of the proceedings, and may very well come to a different decision after a hearing on merits.

10. The plaintiff has averred in his pleadings that he has been in occupation of the suit property for about 36 years now. He however does not claim the land by way of adverse possession. Indeed, in his plaint, he has pleaded that he came to occupy the land at the behest of the owner who is now deceased, which would negate any claim for adverse possession, for his occupation was with the licence of the title holder. No title is annexed to the supporting affidavit , and I am not very certain as to who the owner of the

property is. The plaintiff himself does not pretend to hold title to the land and he does not claim the land. Given this position, I do not know on what basis the plaintiff wants a permanent injunction against the defendants. It would have been a different matter if the plaintiff was claiming the land and needed protection pending hearing of his claim to the land but as I mentioned, he has not made any claim to the land through these proceedings.

11. In her submissions, Mrs. Wanderi for the applicant, submitted that the applicant needs about one year to vacate the suit premises, which is sufficient time for him to take away his belongings. She submitted that this is all the applicant is asking for.

12. The above submission suggests that the plaintiff is a mere licensee. He does not hold a lease to the land and he does not claim any portion of the land. Unfortunately, one can only occupy land under licence under the mercy of the licensor. A licence, unlike a lease, has no term and can be terminated at any time unless it is under some sort of contract. That, unfortunately, is the nature of interest that the plaintiff has. What the plaintiff has is a bare licence. It appears as if the current owners of the land want the plaintiff out immediately. I have not seen, and I have not been shown, any law which would entitle the plaintiff to reside on the suit property for at least one more year as he prepares himself to vacate the suit premises. I think what the plaintiff needs to do is to negotiate with the owners to allow him this period of time. But for me, I have not found any law that would protect him and entitle him to the one year he is asking for.

13. In the premises, I do not think that the plaintiff has laid down a prima facie case with a probability of success. Not being in doubt, I need not consider the balance of convenience.

14. The upshot of the above is that I find no merit in the application and it is hereby dismissed. I however make no order as to costs. For the avoidance of doubt, the interim orders earlier issued are hereby vacated.

15. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 23<sup>rd</sup> day of March, 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Ms. Kipruto holding brief for Mrs Wanderi for the plaintiff/applicant

Defendants q: absent

Court Assistant : Janet

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT AT NAKURU**