



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 34 OF 2016

DAVID KIPKOECH KOGO.....PLAINTIFF

VERSUS

ESTHER CHESAINA1ST DEFENDANT

REDFORD PIM2ND DEFENDANT

RULING

1. The Applicant is a son of the Respondent. The Applicant had filed a suit in which he seeks orders that he has acquired a portion of **3.5 acres** out of **LR No 7541** which is registered in the name of the Respondent. The Applicant contemporaneously filed a Notice of Motion seeking to restrain the Respondent from interfering in any way with a portion of **3.5 acres** comprised in **LR No 7541**. He also seeks for an order of inhibition forbidding any dealings on **LR No 7541**.
2. The Applicant contends that he has been on the **3.5 acres** (suitland) for a period of over 12 years and as such, he has acquired that portion by adverse possession. He contends that that is where his family is residing and that he should be given the orders pending the hearing of the Originating Summons. He contends that he has lived on the suitland since 1984. That the Respondent has filed a suit seeking to evict him from the portion he is occupying.
3. The application is opposed by the Respondent based on a replying affidavit sworn on 11/3/2016. The Respondent contends that the application which seeks to restrain her from dealing with her land is malicious, misconceived and without merit. That she designated **70 acres** out of **LR No. 6133** and **6150/1** to the Applicant but that the Applicant has refused to move out of **3.5 acres** comprised in **LR No 7541**.
4. The Respondent further contends that she had filed **Kitale Environment and Land Case No 25 of 2014** in which she wanted orders evicting the Applicant from portions of **LR No. 6133** and **6150/1**. This case was compromised when the Applicant was given **70 acres**. The Respondent contends that the Applicant has been staying on the suitland with her permission and therefore the Applicant cannot seek to have the **3.5 ares** by way of adverse possession.
5. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondent. In an application for injunction, an Applicant has to demonstrate that he has a prima facie case with probability of success. An injunction will not normally be granted unless otherwise the Applicant will suffer loss which will not be compensated in damages. If the court is in doubt, it will decide the application on a balance of convenience. See **Giella -vs- Cassman Brown Co. Ltd [1973] EA 358.**

6. In the instant case, it is not contested that the Applicant is son to the Respondent. The law relating to adverse possession is that one cannot claim adverse possession if he has been on the land with the permission of the owner. The Applicant herein has been on the land with the permission of the Respondent. The permission stems from the fact that the Applicant is the son of the Respondent. The Applicant's argument that he is an adult who is independent from his parent has no legal basis. The issue of age does not matter. I know of no authority which says that a son can seek to have a parent's land by way of adverse possession. The only lawful and possible means by which a son can have land from a parent is through gift or through succession upon the demise of a parent.
7. The Applicant has been given **70 acres** by the Respondent. The consent which compromised in **Kitale Environment and Land Case No 25 of 2014** was clear. The Respondent was to settle on a designated area. Instead of settling where he was given, he is still filing more cases. I find that the Applicant has not demonstrated that he has prima facie case with probability of success.
8. The Applicant has not demonstrated that he will suffer any loss which may not be compensated in damages. There is no evidence that the Applicant intends to sell the land where the suitland is comprised. I do not have to consider the balance of convenience. I find that the Applicant's application lacks merit. The same is hereby dismissed with costs to the Respondent.

It is so ordered.

Dated , signed and delivered at Kitale on this 12th day of May, 2016.

E. OBAGA

JUDGE

In the presence of Plaintiff/Applicant.

Court Assistant – Isabellah

E. OBAGA

JUDGE

12/5/16