



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 16 OF 2016

FRANCIS MUIRURI MUNYUA.....1ST PLAINTIFF

VIRGINIA NYANJIRU MUIRURI2ND PLAINTIFF

VERSUS

ROSELINE CHEBET KURESOI.....DEFENDANT

RULING

(Application for injunction; plaintiffs having title to the suit properties; suit for eviction of the defendant; defendant filing a counterclaim for adverse possession; best in the circumstances to determine the application by use of the balance of convenience; defendant to continue being in possession but to deposit security within 60 days)

1. This suit was commenced on 22 January 2016 by way of plaint. It is pleaded in the plaint that the plaintiffs are the registered proprietors of the land parcels Nakuru/Ngongongeri/1860 and 1859 respectively. Each of the two parcels measures about 10 acres. It is averred that both plaintiffs, who are man and wife, purchased their parcels of land from one John K. Rotich in the year 2006. They were then issued with title deeds and took possession of their respective parcels. It is pleaded that in early January of 2016, while the plaintiffs were planning to prepare their land, the defendant trespassed into their land and positioned hired goons. This, it is pleaded is motivated by ill will, malice and an intention to cause harm to the plaintiffs. In the suit, the plaintiffs want the defendant evicted from their land, an order of vacant possession and permanent injunction.

2. Together with the suit, the plaintiffs filed an application seeking orders to have the defendant restrained from the suit land pending hearing and determination of the case. It is that application which is the subject of this ruling. In the supporting affidavit, it is deposed that the plaintiffs' land is as a result of subdivision of the land parcel Nakuru/Ngongongeri/1838. They have annexed their sale agreements with John K. Rotich, the mutation forms, and copies of their title deeds which show that they were issued on 2 May 2007. A supplementary affidavit was also filed wherein it was deposed inter alia that in the year 2013, the applicants had hired one Richard Kipkoeh to plough the land using a tractor. It is deposed that the defendant stopped him from working on the land and destroyed the tractors. She was then charged with the offence of forcible detainer vide Nakuru Criminal Case No. 654 of 2013.

3. The defendant filed a defence and counterclaim. She pleaded that she is entitled to the disputed properties by way of adverse possession. She averred that she has been in occupation for over 12 years even before the plaintiffs purchased it. She asked for orders that she be declared to have acquired the two

properties by way of adverse possession and cancellation of the titles of the plaintiffs. She has opposed the application for injunction through a replying affidavit wherein she has deposed that she is in occupation of the disputed properties. She has stated that she will be prejudiced by the orders of injunction since this will amount to eviction without the matter first having been determined on merit. She has also deposed that she has not been served with summons and therefore the suit is incompetent and should be dismissed. She denied being violent as alleged by the applicants.

4. I invited both counsels to file submissions but I only saw the submissions of Ms. Omwenyo for the applicant. I have taken account of these in my ruling.

5. There is no question that the two applicants have title to the suit properties. However, it cannot be escaped that there is a counterclaim for the same parcels of land based on the doctrine of adverse possession. It also appears to me that the defendant may have taken possession at some point and that is the reason the plaintiffs presented the forcible detainer case. In my view, both plaintiffs and defendants have presented a case that needs to go for trial. It is therefore best to decide this application on a balance of convenience.

6. I am prepared to hold, for the purposes only of determining this application, and without prejudice to any different finding that I may hold after hearing the parties, that the defendant is in possession of the suit properties. I am also prepared to allow the defendant to be in continued possession of the suit properties. In applications of this nature, it is not uncommon for the court to direct an undertaking as to damages. In my view, considering the circumstances of this case, I think the best order is to have the defendant deposit some security in court. In the event that she loses the suit, the security will be forfeited to the plaintiffs. If she succeeds, the same will be returned to her. In my discretion, and considering that the two parcels of land are of 20 acres in total, I direct the defendant to deposit security in the sum of Kshs. 250,000/= within 60 days. If she does not raise the said security within the said period, then she will have to cede possession to the plaintiffs for the duration of the suit.

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

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 21st day of September 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of: -

Mr. Mwalo holding brief for Mr. Morintat for defendant /respondent

No appearance on part of Ms. Omwenyo for plaintiff/Applicant

C/Assistant : Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU