



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 28 OF 2015

MESHACK JUMA 1ST APPLICANT

EDWARD CHESABIT 2ND APPLICANT

ALFRED SAKIT 3RD APPLICANT

VERSUS

KENETH IGADWAH ODANGA

(BEING AND SUED AS THE ADMINISTRATOR OF THE ESTATE

OF JOHNSTONE REUBEN ODANGA) RESPONDENT

RULING

1. The three applicants **Meshack Juma**, **Edward Chesabit** and **Alfred Sakit** filed an application dated 4/3/2015 in which they seek injunction orders against the respondent restraining him and his servants or agents from tilling, sub-letting, leasing, charging or entering in any part of **L.R. No. 6138** measuring **33.5 acres** (suit land) until the hearing and determination of this suit. The suit land belonged to the late **Johnstone Reuben Odanga** the father of the respondent who is now the administrator of his estate.
2. The applicants have filed an originating summons in which they are seeking order that they together with 14 others have acquired the suit land by adverse possession. The applicants contend that they bought the suit land from the father of the respondent and that they have been peacefully staying on the suit land **since 1995 until 2015** when the respondent has been going to the suit land in the company of police officers and local administration threatening to demolish the applicant's houses. The applicants contend that they have a prima facie case with probability of success and that an injunction should issue in their favour.
3. The respondent has opposed the applicants application based on a replying affidavit sworn on 5/5/2015 as well as a further affidavit sworn on 8/6/2015. The respondent contends that the issues being raised by the applicants have been litigated in Kitale **HCCC No. 83 of 2010** which has been finalized and that those who were on the suit land have already been evicted. The respondent states that the first applicant's attempt to be enjoined in Kitale **HCCC No. 83 of 2010** was not successful as his application was dismissed. He contends that the agreement being relied on by the applicants was invalidated due to failure by the purchasers to abide by the terms of the agreement.
4. The respondent further contends that all the applicants reside at a place called Chorlim. The

respondent states that the applicants possession of the suit land has been by force and that the first applicant has been intimidating him with threats to violence not only to himself but other members from the respondent's community.

5. I have carefully gone through the applicants application as well as the response thereto by the respondent. The principles for grant of temporary injunctions are well settled. First an applicant has to demonstrate that he has a prima facie case with probability of success. Secondly an injunction will not normally issue unless otherwise the applicant might suffer irreparable loss which may not be compensated in damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.
6. In the instant case, the applicants are claiming that they are in possession of the suit land and have been so staying peacefully since 1995. Contrary to the applicant's claims, those who have been on the land have never peacefully occupied it. There have been long standing disputes regarding occupation of the suit land as can be seen from the documents annexed to the respondent's replying affidavit and further affidavit. The respondent has even filed a case in court and obtained orders of eviction against all those on the suit land as well as their relatives or servants. The respondent exhibited an eviction order issued in **2014**. He has deponed that the eviction has since been carried out. The applicants have tried to argue that they were not parties to the suit which resulted in eviction orders. This argument is without merit. The first applicant Meshack Juma swore affidavits in Kitale HCCC No. 83 of 2010 in which he stated that all the defendants in that suit were on the suit land with his permission. The third defendant in that suit swore an affidavit that she was a wife of the first applicant in this case. It is therefore ironical for the first applicant to turn round and claim that he has been on the land peacefully without any interruption and that he was not party to or was not involved in the aforementioned case. The eviction order is clear. It was directed to the defendants named therein as well as their agents or servants. The first applicant is said to be the husband of the third defendant in that suit. The eviction orders therefore applied to him as well including the others whom he said were on the suit land with his authority.
7. The applicants have not demonstrated that they have any prima facie case against the respondents. They will not suffer any loss which will not be compensated in damages should they succeed in their claim for adverse possession. I therefore find that the applicants 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 29th day of June, 2015.

E. OBAGA

JUDGE

29/6/2015

In the presence of Mr. Ingosi for Mr. Barongo for applicant and defendant in person. Court Clerk - Isabellah.

E. OBAGA

JUDGE

29/6/2015