



**REPUBLIC OF KENYA**

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

**E&L 292 OF 2013**

**CYNTHIA CHEPKEMBOI KIPTUM.....PLAINTIFF**

**VS**

**MICHAEL KAMAU NJAU.....DEFENDANT**

***(Application for injunction; application not opposed; plaintiff claiming adverse possession after a purchase made in the year 2000; 12 years having lapsed; plaintiff asserting to have enjoyed quiet possession; prima facie case established; application for injunction allowed).***

**RULING**

The application before me is that dated 9 January 2014 filed by the plaintiff. It is an application for injunction, seeking to restrain the defendant from interfering with the plaintiff's quiet possession of the land parcel L.R No. 9930/15 (the suit land), or dealing with it, until the final determination of this suit. The application is supported by the affidavit of the plaintiff. Despite being served, the defendant has not filed any response to the application and indeed, has not entered appearance to this suit.

Although there is no response from the defendant, it does not mean that I must automatically allow the application. I still need to be convinced that the applicant has set out a prima facie case, that the applicant stands to suffer irreparable loss if the injunction is not granted, and if in doubt, decide the matter on a balance of convenience. These principles were espoused in the case of ***Giella v Cassman Brown (1973) EA 358***, and I see no need to re-invent the wheel.

This suit was commenced by way of Originating Summons. The Applicant (who I refer to as the plaintiff), has contended in the Originating Summons, that she has acquired title to the suit land by way of adverse possession. It is her case that on 20 September 2000, she purchased the suit land for a consideration of Kshs. 1,260,000/= from the respondent (who I refer to as the defendant). She avers to have paid the whole purchase price and to have entered into possession immediately. She has stated that despite having paid the defendant in full, the defendant has refused to transfer the suit land to her. Nevertheless, it is her case that she has been in quiet occupation of the suit land for a period in excess of 12 years, and she is therefore entitled to the suit land by way of adverse possession.

To the supporting affidavit, the plaintiff annexed a copy of the agreement and a cash deposit slip. She has further stated that in the month of January 2014, she was reliably informed that the defendant wishes to forcefully enter the suit land. It is for this reason that she want this court to issue the injunction sought.

I have considered the plea of the plaintiff. The only material before me is that provided by the plaintiff as the defendant chose not to respond to this application. I have seen the agreement of 20 September 2000. In it the defendant was selling to the plaintiff the whole of the suit land. I have also seen a letter of 11 August 2005, inter alia, asking the defendant to surrender the certificate of title and apply for consent to transfer the suit land to the plaintiff. It seems as if these were ignored. If the claim of the plaintiff, that she has been in quiet possession of the suit land since 2000, is true, then it can be seen that 12 years have lapsed and it may be, that she is entitled to the suit land through adverse possession. That of course, is a matter to be determined at the trial. That said, I think I have before me sufficient material, to come to the conclusion that the plaintiff has demonstrated a prima facie case with a probability of success. If she is evicted, she of course stands to suffer irreparably and in any event, the balance of convenience tilts in her favour since she is in occupation of the suit land.

For the above reasons, I allow this application. I bar the defendant and/or his servants/agents from entering the suit land, staying on the suit land, or interfere in any way with the plaintiff's occupation and use of the suit land. I also bar the defendant from offering the whole or any part of the suit land for sale, leasing the suit land, or in any other way, dealing with the suit land. I also issue an order of inhibition, inhibiting the registration of any dispositions into the register of the suit land. These orders shall remain in force until the final determination of this case.

It is hereby ordered.

**DATED AND DELIVERED AT ELDORET THIS 5TH DAY OF FEBRUARY 2014**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

*Delivered in the presence of:*

*Mr. C.K. Mitei for the plaintiff/applicant*

*N/A for defendant who has not entered appearance*