



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E&L 878 OF 2012

Formerly HCC 120 of 2012

**IN THE MATTER OF SECTION 38 OF LIMITATION OF ACTIONS ACT CHAPTER 22 OF
LAW OF KENYA**

AND

IN THE MATTER OF ORDER 37(7) OF CIVIL PROCEDURE RULES (2010)

AND

**IN THE MATTER OF LAND PARCEL NO. UASIN GISHU/KIPKABUS SETTLEMENT
SCHEME/336**

MUSA KIPKORIRI

PIUS CHELELGO

STEPHEN CHELELGO

ERICK KIPTANUI

AND

KIMUTAI SITIENEI

JOHN KIPKOECH SITIENEI

(Application to vacate orders of injunction; orders of interim injunction having been granted but having not been extended; interim order registered against the title; application for injunction having never been heard inter partes; whether such orders should continue being in the register of the title; declared that interim orders are no longer in existence; register to be rectified to remove the entry of interim orders).

RULING

The application before me is that dated 30 April 2014 filed by the respondent to this suit which was commenced by way of Originating Summons. For ease of reference, I will refer to the applicants to the Originating Summons as plaintiffs and the respondent to the originating summons as defendant.

This suit was commenced by way of Originating Summons filed on 5 June 2012 under the provisions of Order 37 Rule 7 of the Civil Procedure Rules and Section 38 of the Limitation of Actions Act. The plaintiffs sought declarations that they are entitled to the land parcel Uasin Gishu/Kipkabus Settlement Scheme/336 by way of adverse possession. It was averred in the affidavit in support of the Originating Summons, that they settled in the suit land in the year 1990, through exchanging a land that they previously owned with the suit land.

Together with the Originating Summons, the plaintiffs filed an application for injunction. The application was certified as urgent and interim orders issued which barred the defendants from inter alia, selling or transferring the suit land, and interfering with the possession of the land by the plaintiffs. That order was first granted on 8 June 2012 and was registered in the register of the title of the suit land.

The defendant has now filed an application dated 30 April 2014, seeking orders that the interim orders issued on 8 June 2012 be discharged and the order of inhibition registered in the register of the title of the suit land be lifted. The application is premised on grounds inter alia that it is more than 1 year and 10 months since the interim orders were granted and the plaintiffs have not set down the application for injunction for hearing inter partes. It is also contended that the orders of injunction have lapsed by operation of law yet they remain on record and ought to be discharged officially.

I have perused the record and note that after the interim order of injunction was first granted on 8 June 2012, it was extended again on 20 June 2012 when the application was to be heard inter partes. A new date was given for 27 June 2012. On that day, the applicants' counsel was not ready to proceed and the matter was adjourned to 7 November 2012. The interim orders were not extended. On 27 November 2012, the matter did not proceed and was adjourned indefinitely. The application for injunction has therefore never been heard inter partes, and the interim orders first issued on 8 June 2012, must have lapsed latest 27 June 2012 for they were never extended.

In the intervening period, a lot has happened to the suit. On 6 November 2012, the 1st, 2nd and 3rd plaintiffs withdrew their suit against the defendant. It therefore follows that the only person existing in this suit is the 4th plaintiff. The 4th plaintiff has not sworn any affidavit to reply to the subject application but I allowed his counsel to address me on any points of law. All that counsel stated was that it would be in the interests of justice that the application not be allowed.

I have considered the application. The application is said to be premised upon the provisions of Order 40 Rule 7 which provides as follows :-

Order for injunction may be discharged, varied, or set aside [Order 40, rule 7.]

7

. Any order for an injunction may be discharged, or varied, or set aside by the court on application made thereto by any party dissatisfied with such order.

In my view, I do not think that Order 40 Rule 7 applies, for the interim orders of injunction lapsed for the reason that they were never extended. However, the problem is that the order of injunction was registered as an encumbrance in the register of the title of the defendants and that registration still stands. There is no question that it needs to be lifted. I think the issue herein does not fall on the provisions of Order 40 Rule 7 but rather on the provisions of Section 3A of the Civil Procedure Act, which empowers the court to issue such order as it deems fit in the interests of justice.

Since the orders of interim injunction are no longer in existence, it is only fair that I so declare, and further order that the entry in the register be discharged. In any event it appears as though the existing plaintiff (4th plaintiff) has no interest in the application for injunction for he has never moved the court to have it heard inter partes. I see no reason why I should not allow this application.

Having the above in mind, I make the following orders:-

1. For the avoidance of any doubt, I declare that the interim orders of injunction issued on 8 June 2012

have lapsed and are no longer in existence.

2. I order the District Land Registrar, Uasin Gishu, to remove the court order entered as entry No. 6 and registered on 14 June 2012 in the register of the title of the land parcel Uasin Gishu/Kipkabus Settlement Scheme/ 336.

3. The defendants shall have the costs of this application as against the 4th plaintiff.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 3RD DAY OF JULY 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Delivered in the presence of:

Mr. H.K. Lagat holding brief for M/s R.M. Wafula for defendants/applicants.

Mr. R.R. Mwetich present for 4th plaintiff/respondent.