

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L 401 OF 2013

LOICE TALLAM & 2 OTHERSPLAINTIFFS

VS

JAMES KIPKIROR KIMIRITION.....DEFENDANT

(Application for injunction; application unopposed; plaintiffs claiming land by way of adverse possession; prima facie case established; application allowed)

RULING

The application before me is an application brought inter alia under the provisions of Order 40 Rule 1, 2 and 4. It is an application for injunction. The applicants want the defendant restrained from dealing with a portion of land measuring 0.14 hectares out of the land parcel Mochongoi Block 1/589 (the suit land). It is their claim that they have acquired title to this portion by way of adverse possession and pending the hearing and determination of the suit, the defendant ought to be restrained from interfering with their possession.

This suit was instituted by way of Originating Summons taken out pursuant to the provisions of Order 37 Rule 7 of the Civil Procedure Rules, and Sections 7,17,37 and 38 of the Limitation of Actions Act. These provisions allow a party to file an Originating Summons to claim land by way of adverse possession. I have discerned from the Originating Summons and the supporting affidavit that the three applicants (whom I will at times refer to as the plaintiffs) state that they bought portions of the suit land from the defendant on various dates. The 1st plaintiff contends that she bought an area measuring 50 by 100 feet on 26th August 1998 at Kshs.30,000/=. The 2nd plaintiff has asserted that he also bought a plot on 28th November 1999 for Kshs. 35,000/=. The 3rd plaintiff on his part has stated that he similarly bought an area measuring 50 by 100 feet on 25 February 2000. It is their case that despite the purchase, the defendant has failed to transfer the said portions to them and has reneged on the agreements. He has asked the plaintiffs to add more money to the purchase price and has threatened to evict them. The plaintiffs have averred that they have been on the claimed portions of the suit land for a period of over 12 years which possession has been quiet and continuous and that they have made developments thereon. In this application they have stated that they are apprehensive that unless the injunction is granted, the defendant may dispose the subject property and evict the plaintiffs from the land that they claim.

Despite being served, the defendant has not filed a response to both the Originating Summons and the application for injunction.

I have considered the application for injunction. The principles upon which the court may consider an application for injunction were laid out in the case of ***Giella v Cassman Brown (1973) EA 358***. The applicant must first demonstrate a prima facie case with a probability of success; secondly, the court will not normally grant an injunction unless the applicant stands to suffer irreparable loss which cannot be compensated by an award of damages; and finally where there is doubt the court decides the matter on a balance of convenience. It should also always be remembered that the essence of an application for injunction is for the court to make an order on how the subject matter of the suit ought best to be preserved pending the substantive hearing of the matter.

I have seen the various agreements which the plaintiffs claim allowed them access to the portions of land that they claim. These agreements as noted earlier are dated 26th August 1998, 28th November 1999 and 25th February 2000. It will be noted that 12 years have passed on all the three agreements. It is therefore

probable that the plaintiffs have been on the portions that they claim for a duration of over 12 years. I cannot tell at this stage whether such possession has been quiet and uninterrupted. I guess that is a matter that will reveal itself at the hearing of the matter. However, I think from the material placed before me that the plaintiffs have laid out a prima facie case with a probability of success. The plaintiffs no doubt stand to suffer irreparable loss if they are evicted pending the hearing of this suit. The balance of convenience in the circumstances of this case, also lies in favour of preserving the status quo, the status quo which, as demonstrated, is that the plaintiffs are in possession of the portions of land that they claim. The plaintiffs claim the land by way of adverse possession and in my view, in the circumstances of this case, their possession ought not to be disturbed pending the hearing of this matter.

I therefore allow the application for injunction. I order the defendant not to evict or disturb the possession of the plaintiffs on the suit land pending the hearing and determination of this suit. I also issue an order of injunction restraining the defendant from selling, leasing or in any other way deal with the suit land in a manner that is adverse to that of the plaintiffs. To further preserve the subject matter, I also issue an order of inhibition, inhibiting the registration of any disposition on the suit land pending the hearing and determination of this suit.

The costs of this application shall be costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 20TH DAY OF NOVEMBER 2013

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Read in open Court

In the Presence of:-

Mr. M.K. Chebii for the plaintiffs/applicants