



**Tenna & 2 others v Sarah (Environment & Land Case E029 of 2024)
[2024] KEELC 13254 (KLR) (19 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13254 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E029 OF 2024
MAO ODENY, J
NOVEMBER 19, 2024**

BETWEEN

PETER H. TENNA 1ST PLAINTIFF

WYCLIFFE WINSTON WAITA 2ND PLAINTIFF

JAMES NJOGU MWANGI 3RD PLAINTIFF

AND

JOSYLN SARAH DEFENDANT

RULING

1. This ruling is in respect of a Notice of Motion dated 30th August, 2024 by the Plaintiffs/Applicants seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of this suit the Honourable be pleased to issue an order of prohibition, prohibiting any dealings with the property known as I.R NO 9950/1, I.R No. 17961/7 and I.R No 21638.
 - d. That this Honourable Court be minded to direct that the OCS Mwariki Police Station to oversee the implementation of the orders herein.
 - e. That costs of this Application be borne by the Respondent.
2. The application was supported by the annexed affidavit of Peter H. Tenna, the 1st Plaintiff/Applicant herein who deponed that the Applicants are the bona fide owners of all that parcel of land known as I.R NO 9950/1, I.R NO 17961/7 and I.R NO 21638. He further deponed that the Respondent



has encroached onto the suit parcels hence the Honourable court should intervene to stop further encroachment.

Plaintiff/Applicants' Submissions

3. Counsel submitted on the issue whether the applicants have a legal right to claim the parcels of land and stated that the Respondent has continued with illegal construction, eviction and demolition within the suit premises even after being served with an order of status quo to be maintained.
4. Counsel submitted that the applicants and the squatters have been in occupation of the suit parcels of land for more than 20 years and are beneficiaries and legal occupants of the estate of the late Richard Ingram Crawford.
5. It was counsel's submission that the defendant is not a bona-fide owner of the parcels of land as she has encroached. Counsel relied on the case of *Stephen Mwangi Gatunge vs Edwin Onesmus Wanja* ELC No 7 of 2021 (O.S) and submitted that those who acted as administrators, vendors and purchasers in the transaction of sale did not have valid title to dispose of the parcel of land. Further that they did not have the authority to dispose of the land, which was core to the existence of adverse possession.
6. Counsel further relied on Halsbury Law of England, 4th Edition Vol 45 at para 26, 1503 and the case of *Ramthan Makal Lalangole vs Lopusikou Kori Lokamar* (2022) eKLR and submitted that the Plaintiffs have demonstrated that there was no required known probate law to enable a succession cause hence the process is a nonstarter. Counsel prayed that the Plaintiff be awarded costs and relied on the cases of *Orix Oil-Kenya Limited vs Paul Kabeu & 2 others* (2014) eKLR and *Solomon Odira Okello & 7 others vs Esther Laboso* (2019) eKLR.

Analysis and Determination

7. The issue for determination is whether the Applicants have proved that they deserve an order of prohibition against the Respondent from further dealing with the suit land known as I.R NO 9950/1, I.R NO 17961/7 and I.R NO 21638.
8. The Respondent was served with the application as per the affidavit of service sworn by B. Randiga dated 12th September, 2024 on 3rd September 2024 but never filed any response. The application is therefore unopposed. This does not mean that the orders have to be granted as prayed without proof if a motion is unopposed. It is still incumbent upon a party who alleges to prove the facts as per Section 107(1) and (2) of the *Evidence Act*.
9. This is an Originating Summons by the Applicants to be declared owners as they allege that they have acquired the suit parcels of land vide adverse possession. In a claim for adverse possession, an applicant must attach a copy of the title, or an extract of the title to show the ownership of the suit parcels of land of which he/she wants to be extinguished and registered in his/her name.
10. In this case, the Applicants have attached copies of transfers in the name of Richard Ingram Crawford and have not explained how the Respondent comes in, either as a registered owner or a beneficiary through a legal process. Courts do not give orders in vain and especially where rights are affected, the Applicant must be clear on the cause of action and the orders that he/she requires.
11. The court is not dealing with the merit of the origination summons at this stage but even if the order was issued, is it against the respondent only or there is a government institution to implement it.
12. I have considered the application, the submission by counsel and find that the application lacks merit and is therefore dismissed with no orders as to costs.



DATED, SIGNED AND DELIVERED AT NAKURU THIS 19TH DAY OF NOVEMBER 2024.

M. A. ODENY

JUDGE

