



**Waswa v Wanjala (Environment & Land Case E007 of 2022)  
[2023] KEELC 15924 (KLR) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15924 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT & LAND CASE E007 OF 2022  
EC CHERONO, J  
FEBRUARY 27, 2023**

**BETWEEN**

**ELECTINA NANJALA WASWA ..... PLAINTIFF**

**AND**

**FEDNAND NYONGESA WANJALA ..... DEFENDANT**

**RULING**

1. This ruling arises from a chamber summons application by the plaintiff/applicant dated September 29, 2022 in which She seeks the following orders;
  1. (spent)
  2. That the respondents, servants, agents or any other person authorized by them be restrained from evicting, threatening, disposing, alienating or in any manner interfering with occupation of the applicant from the land parcel No.E.Bukusu/N.Nalondo/5714 pending the hearing and determination of this application.
  3. That the respondents, servants, agents or any other person authorized by them be restrained from evicting, threatening, disposing, alienating or in any manner interfering with occupation of the applicant from the suit land parcel No. E. Bukusu/N. Nalondo/5714 pending the hearing and determination of the main suit
  4. That costs be provided for
2. The application is premised on grounds apparent on the face of the said application and the supporting affidavit of the applicant sworn on even date. The said supporting affidavit is further supported by numerous annexures thereto.
3. The application is opposed by the respondent vide a replying affidavit sworn on 17<sup>th</sup> October 2022. The replying affidavit is further supported with 4 annexures.



### **Applicant's Summary of Facts**

4. The applicant in Her supporting affidavit contends that though the respondent is the registered owner of the suit land parcel No. E.Bukusu/S.Nalondo/5714, She has been in occupation of the whole parcel of land measuring approximately 0.4HA. The applicant further states that She bought the suit land in the year 2009 from one Isaac Kimawachi Nandokha and that she has been in quiet and peaceful possession of the land for well over 33 years to the exclusion of the respondent
5. She further states that since She acquired the suit land, she has lived on the land together with her family and that She has done extensive development on the land such as farming, planting of trees and food crops as well as construction of a permanent and semi-permanent structures.
6. The applicant also averred that having occupied the suit land since the year 2009 and that the respondent's Title, if any, on the 0.4HA parcel of land was extinguished by the concept of adverse possession and hence the respondent is holding the Title to the 0.4HA parcel of the land in trust for her.

### **Respondent's Summary of Facts**

7. The respondent on his part deposed that He is the absolute registered owner of the suit land parcel No. E.Bukusu/S.Nalondo/5714 after He bought it for value from one Mzee Willington Chemwanda. The respondent further stated that upon acquiring the suit property, he put up a house and planted crops and trees. He stated that to the best of his knowledge, the applicant is his neighbour and that She has put up a home on a different parcel of land.
8. At paragraph 21 of his supporting affidavit, the respondent deposed as follows;

“21. That I will be seeking orders from this court to have the County Land Surveyor and Deputy Registrar to visit the suit land and establish on which parcel of land the Applicant stays.”

### **Analysis and Decision**

8. I have considered the Chamber Summons application dated September 29, 2022, the affidavit evidence both in support and in opposition thereto as well as the annexures thereto. It is not in dispute that the applicant is seeking injunction orders which is an equitable relief. In determining whether to grant an equitable relief of injunction, this Honourable court must satisfy itself that the applicant has established the following three requirements;
  1. A prima facie case with high chances of success.
  2. That he will suffer irreparable loss which cannot be compensated by an award of damages, and
  3. Where the court is in doubt, it may decide the matter on a balance of convenience
9. The applicant who is also the plaintiff filed this chamber summons application contemporaneously with originating summons seeking orders inter-alia that She is entitled to be registered as the owner of the suit land parcel No. E.Bukusu/S.Nalondo/5714 having acquired the same by operation of the law. The respondent has strenuously opposed the claim and contends that he is the one in possession and occupation and not the applicant.
10. Though the respondent is the registered proprietor of the suit land Parcel No. E.Bukusu/S.Nalondo/5714, the applicant is challenging the respondent's title to the land on grounds that the same has been extinguished by the doctrine of adverse possession. Since certificate of title is a prima facie



evidence of ownership and the applicant has not acquired one, I am satisfied that he has not established the first condition for the grant of the injunction orders. On the second ground, the applicant has deposed on oath that She bought the suit land in the year 2009 and that She has been in quiet possession and occupation since then and that She has also done extensive developments on the suit property including constructing permanent and semi-permanent structures as well as growing trees and crops. The applicant has also stated in the application that She has nowhere to go in the event She is evicted from the suit land. That in my view is not sufficient evidence that She will suffer irreparable loss. In that regard, the applicant has not also established the second condition for the grant of the injunctive order.

11. Deciding the application on the third condition, I find that the balance of convenience tilts in favour of allowing the applicant to remain in the suit land parcel No. E.Bukusu/S.Nalondo/5714 as alleged in the supporting affidavit pending the hearing and determination of this suit.
12. In view of the matters aforesaid, I find the chamber summons application dated September 29, 2022 merited and the same is hereby allowed as follows;
  1. That the respondents, servants, agents or any other person authorised by them be and are hereby restrained from evicting, threatening, disposing, alienating or in any manner interfering with possession of the applicant from the land parcel No. E.Bukusu/S.Nalondo/5714 pending the hearing and determination of the main suit.
  2. Costs of the application to be costs in the cause.

**READ, DELIVERED AND SIGNED IN THE OPEN COURT AT BUNGOMA THIS 27<sup>TH</sup> FEBRUARY, 2023**

**HO. E.C CHERONO**

**ELC JUDGE**

**In the presence of;**

- 1. Mr Wamalwa R for the Respondent**
- 2. Applicant/Advocate-absent**
- 3. Joy C/A**

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