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| Case Number: | Environment and Land Case 53 of 2019 |
| Date Delivered: | 08 Oct 2020 |
| Case Class: | Civil |
| Court: | Environment and Land Court at Narok |
| Case Action: | Ruling |
| Judge: | Mohammed Noor Kullow |
| Citation: | Leboo ole Naigisa & 9 others v Andrew Kamusi Bodi & 9 others [2020] eKLR |
| Advocates: | - |
| Case Summary: | - |
| Court Division: | Environment and Land |
| History Magistrates: | - |
| County: | Narok |
| Docket Number: | - |
| History Docket Number: | - |
| Case Outcome: | Application dismissed with costs |
| History County: | - |
| Representation By Advocates: | - |
| Advocates For: | - |
| Advocates Against: | - |
| Sum Awarded: | - |
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REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC NO. 53 OF 2019

LEBOO OLE NAIGISA & 9 OTHERS.....PLAINTIFFS

VERSUS

ANDREW KAMUSI BODI & 9 OTHERS.....DEFENDANTS

RULING

By a Notice of Motion dated 22nd October, 2019 the Plaintiff/Applicant had sought for the following orders:-

1. Spent

2. That pending the hearing and determination of this application interparties, a temporary order of injunction do issue restraining the respondents from disposing off, alienating and/or selling, transferring, further demarcating, sub dividing, sending hired goons to the land, or in any manner of action that may disturb or provoke peace on title Nos. LR. Trans Mara/Sikawa/144, LR TITLE NOS. LR TRANS MARA/SIKAWA/615, LR TITLE OS. LR TRANS MARA/SIKAWA/616, LR TITLE OS. LR TRANS MARA/SIKAWA/643, LR TITLE NOS. LR TRANS MARA/SIKAWA/644, LR TITLE NOS LR TRANS MARA/SIKAWA/681, LR TITLE NOS. LR TRANS MARA/SIKAWA/682, LR TITLE NOS. LR TRANS MARA/SIKAWA/683, LR TITLE NOS LR TRANS MARA/SIKAWA/684.

3. That the court be pleased to issue urgent hearing date for this matter owing to its urgency.

4. That the orders and service of this application and the originating summons be served upon the respondents by means of substituted services, being the publication of the same on an advertisement in either the Daily nation newspaper or the East Africa Standard Newspaper.

5. That pending the hearing and determination of this suit, the court be pleased to issue a temporary injunction order restraining the respondents from disposing off, alienating and/or selling, transferring, further demarcating, sub dividing, sending hired goons to the land, or in any manner of action that may disturb or provoke peace on TITLE NOS. LR. TRANS MARA/SIKAWA/144, LR TITLE NOS. LR TRANS MARA/SIKAWA/615, LR TITLE OS. LR TRANS MARA/SIKAWA/616, LR TITLE OS. LR TRANS MARA/SIKAWA/643, LR TITLE NOS. LR TRANS MARA/SIKAWA/644, LR TITLE NOS LR TRANS MARA/SIKAWA/681, LR TITLE NOS. LR TRANS MARA/SIKAWA/682, LR TITLE NOS. LR TRANS MARA/SIKAWA/683, LR TITLE NOS LR TRANS MARA/SIKAWA/684.

6. That the costs of this application be provided for.

The Application is based on the grounds that the applicants have since 1945 been in continuous, open, exclusion, undisturbed possession, use and enjoyment of land parcels No. Trans Mara/Sikawa/144,615,616,643,644,681,682,683 and 684 hereinafter called the suit for over 12 years since 1945 and that the respondents have hired goons to attack and destroy their houses and in the event they are not presented they would have the suit land transferred to unsuspecting buyers.

The application was further supported by the affidavit of LEBOO OLE NAIGISA sworn on 22/10/19 and filed in court on the sme day in which he states that he is a member and resident of Sikawa Trans Mara Location Narok County and has the Authority to swear the affidavit for and on behalf of inhabitants of the suit parcel of land. He further stated that he is the chairman and an elder of the Sakawa Community and was involved in the original sub division of the suit land into various plots to the Plaintiff/Applicants and that ever since he started hiring of the land they never had anyone claiming ownership nor was their claim ever interfered with, interrupted, on the use and development of the land curtailed.

The applicants have attached to the application a list of 500 persons and photographs of the suit land with various developments and certificates of official search to show that the suit land is registered in the names of the respondents.

The application was opposed by the respondents who had filed a preying affidavit filed in court on 5/12/2019 by Monica Atieno Bodi for and on behalf of herself and the other respondents in which she stated that they are the lawful and registered proprietors of the suit land she attached to the affidavit certificate of official search and copies of titles to the land.

The Respondents stated that on or before January 2019 while peacefully residing and cultivating on the suit land the applicants evicted them took over the sugarcane they planted and started leasing the land to third parties. The respondents contended that the applicants had sued them previously after the determination of the objection were dismissed by the land adjudication officer and their appeals to the minister dismissed and thus disputed the applicants claim that they lived on the suit land continuously for 50 years.

I have considered the application before me and the respondents written submissions. This is an application in which the applicant sought for orders of injunction the conditions to the grant of orders of injunction is now well settled as confirmed in the case of Giella –versus-cassman Brown in which a party must show the existence of a prima facie case with probability of success, that damages would not be adequate compensation and that the balance of convenience tilts in the applicants favour. In the instant case the applicants allege that they have been in continuous and uninterrupted occupation of the land for over 50 years and thus base their claim on adverse possession. The respondents on the other part contend that they are the lawful and absolute owners of the suit land and have attached to the application copies of official searches and titles to the land. the court of appeal in CMC Motors Ltd –Versus-Evans Gaseche Boro held that:-

“A prima facie case means more than an arguable case that the evidence must show an infringement of a right and the probability of success of the applicants case at a trial”.

From the affidavits and attachments, the applicants have not demonstrated that the suit land was ever registered in their names even though they claim to have lived on the land for over 50 years and want to claim the same by way of adverse possession they have not demonstrated why this claim was not adverse when the 12 years had lapsed. On the other part the respondents have attached copies of their titles and various decisions by the Minster with respect to appeals to the Minister as envisaged under section 25 of the Land Adjudication Act. They were filed by the applicants and dismissed and issued at the titles and the objection and the dismissal I find that the applicants have not established a prima facie case.

On whether damages would not be adequate compensation I find that the applicants would be compensated by way of damages and thus the balance of convenience does not tilt in their favour.

The upshot of the above is that the notice of motion dated 22/10/2019 is not merited and I therefore dismiss the same with costs.

DATED, SIGNED and DELIVERED in open court at NAROK on this 8th day of October, 2020.

Mohammed N. Kullow

Judge

8/10/2020

in the presence of: -

CA:Chuma

N/A for the parties and advocates

Mohammed N. Kullow

Judge

8/10/2020



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