



Makobo (Suing as Legal Representative of the Estate of the Late James Makobo) v Mutungulu Farmers Company Limited (Environment & Land Case 370 of 2019) [2023] KEELC 17939 (KLR) (9 June 2023) (Ruling)

Neutral citation: [2023] KEELC 17939 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 370 OF 2019**

AA OMOLLO, J

JUNE 9, 2023

BETWEEN

ANNE MWIKALI MAKOBO (SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE JAMES MAKOBO) APPLICANT

AND

MUTUNGULU FARMERS COMPANY LIMITED RESPONDENT

RULING

1. This application dated September 17, 2019 is brought under the provisions of article 40 of the Constitution, section 50 and 51 of the Civil Procedure Rules. The plaintiff/applicant sought for the following;
 1. Spent
 2. That a mandatory injunction do issue restraining the respondent by herself, agents and/or employees or whomsoever is acting on her behalf from demolishing, transferring, selling, conveying, charging, leasing, or in any way dealing with plots No 1 and 12 pending the hearing and the determination of this suit.
 3. That the defendants be sanctioned for contempt and blatant disregard of this honourable court's orders.
 4. That Matungulu Farmers be compelled to transfer the titles of property known as plot No 1 and plot No 12 to the Applicant as administrator of the estate of James Makobo.
 5. That the cost be in the cause.
2. The application is premised on the grounds *inter alia*;



- a. That despite the decree by court, the respondent proceeded to subdivide and issue titles without considering the estate of the deceased.
 - b. The applicant herein has thus suffered immeasurable loss owing to the respondents acts of utter and complete disregard of the directions of this honourable court.
 - c. The applicant thus seeks for an order compelling Matungulu Farmers to transfer the titles of property known as plot No 1 and plot No 12 to the applicant as administrator of the estate of James Makobo.
 - d. The applicant seeks for an injunction restraining the respondent by herself, agents and/or employees or whomsoever is acting on her behalf from demolishing, transferring, selling, conveying, charging, leasing, or in any way dealing with plot No 1 and 12 pending the hearing and the determination of this suit.
3. The applicant also swore an affidavit in support of the application which raised the facts as pleaded in the grounds on the face of the application. There is no replying affidavit filed in opposition to the application.
 4. The application has been brought post the judgment delivered on February 10, 2006 by Wendoh J where she found that plot 1 and 12 Matungulu Farmers Ltd. belonged to plaintiff (James Makobo Muthua) and the defendant company (Matungulu Farmers) was permanently restrained from trespassing upon it, selling or interfering with the said land in any manner.
 5. From a reading of the judgement rendered and which was annexed by the applicant, the court already granted prayer 2 of the motion by issuing an order of permanent injunction against the defendant company. The prayer number 3 for contempt has not been ably addressed or proved as the applicant did not name the directors who declined to effect the transfer.
 6. In respect to prayer 4 seeking to have the defendant compelled to effect the transfer, at paragraph 7 of the supporting, the applicant deposed that the defendant proceeded to subdivide and sell the plots. The affidavit does not bring out what has been subdivided and sold ie whether it is the entire land or its plots 1 and 12.
 7. The judgment was rendered in 2006 which is approximately over 13 years as at the time of filing the application. The applicant having failed to demonstrate that the subdivision alluded to did not affect plot 1 and 12, it would be in vain to give an order compelling a transfer for a plot number which may no longer be in existence. I find prayer 4 is also not proved.
 8. In conclusion, I find that the application is without merit and it is dismissed. Since the application is not defended, no costs is awarded.

RULING DATED AND DELIVERED AT NAIROBI THIS 9TH DAY OF JUNE, 2023

A. OMOLLO

JUDGE

In the Presence of

N/A for both parties

