

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

ELC CASE 60 OF 2013

KAYATTA FARMERS CO-OP SOCIETY LTD PLAINTIFF

VERSUS

DORCUS MUINDI & 48 OTHERS DEFENDANTS

RULING

1. The Plaintiff filed a Plaint dated 4.11.2013 seeking injunctive and declaratory reliefs against the Defendants. The Plaintiff/ Applicant at the same time filed a motion seeking injunctive reliefs against the same Defendants/Respondents. After service of the application and the summons upon them, only the 2nd Defendant/Respondent filed replying affidavit to oppose the application.
2. The Applicant's case is that the Plaintiff bought suit land on 22.8.2001 from Matungulu Farmers Co-op Ltd. and is currently registered owner. Since then the Plaintiff has been undertaking agricultural activities in the same farm including growing coffee, pineapples and leasing out part of the land 4532/2, LR. No.1853 and 1850/1. The applicant avers that the land is surveyed, beacons and clearly demarcated on the ground. However, the Defendants have been trespassing therein. Sometimes in 2010 the Defendants trespassed on the land and with the help of the police Plaintiff managed to chase the Defendants away.
3. However, the Defendants have resorted into trespassing to the suit land and have destroyed Plaintiff crops, structures, have dug trenches and terraces and interfered with Applicant's use and operations in the suit land LR.4532/2, 1853 and 1850/1. It is on the above basis the Applicant is seeking the reliefs in the instant application.
4. The 2nd Respondent claims to own jointly with his late mother LR.No.4532 and annexes a copy of title issued on 26.1.1976. He denies knowing Defendants No.1, 3 upto 49 and calls them strangers whom he has never met. According to him the other Defendants have been invading suit land and are the same people invading their land. The 2nd Respondent seeks the application to be dismissed.
5. After going through the affidavits by the Applicant and the Respondent No.2, it is apparent that the Respondent No.2 has not put any search certificate confirming that ownership of LR.No.4532/2 as Applicant dismissed copy of title as fake. The Applicant has a copy of title of the same and official search which confirms ownership.
6. The 2nd Respondent does not indicate whether he is in occupation of the suit land or whether the sought orders will affect him. He is concentrating on challenging the applicant's title. The rest of the Defendant have failed to file any reply to oppose the suit or the application despite service. The court therefore finds the application has merit and grants the following orders:-

1. Prayers Nos.2, 3, 4, 5, and 7 pending hearing and determination of the suit.
2. That costs in the cause.

Dated and Delivered at Machakos, this 13th day of February, 2015.

CHARLES KARIUKI

JUDGE