



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MACHAKOS
CIVIL CASE NO. 39 OF 2001

- 1. VELJI JADWA ::::::::::::::::::::::::::::::: 1 ST PLAINTIFF**
- 2. MAHUBHAI VELJI VARSANI ::::::::::::::::::::::: 2 ND PLAINTIFF**
- 3. BHIMJI VELJI VARSANI ::::::::::: : 3 RD PLAINTIFF**

VERSUS

- 1. THE MUNIIPAL COUNCIL OF MAVOKO ::::::::::: 1 ST DEFENDANT**
- 10 2. HIS WORSHIP MAYOR PETER MAILU ::::::::::: 2 ND DEFENDANT**
- 3. CLLR MBOTE GITHINJI ::::::::::::::::::::::: 3 RD DEFENDANT**
- 4. CLLR. MBOTE KING'ANGI ::::: : 4 TH DEFENDANT**
- 5. AMOS KILONZO ::::::::::::::::::::::: 5 TH DEFENDANT**
- 6. PATRIC NDETI ::::::::::::::::::::::: 6 TH DEFENDANT**

Coram: J. W. Mwera J.
Kavila Advocate for Applicants
P. Mulwa Advocate for 1st Respondent
F. Mulwa Advocate for 2nd, 5th and 6th Respondents
20 N/A Advocate for 3rd and 4th Respondents
C.C. Muli

R U L I N G

The plaintiff firm in its application of 14.3.2001 under O.39 r. 1 Civil Procedure Act desires that all the defendants and their agents etc. be restrained from trespassing, building on and in any way interfering with the plaintiff’s land No. LR 25062 Mlolongo Trading Centre, Athi River.

Mr. Kavila argued and showed that the plaintiff is the owner of the subject property by way of a government lease and that the defendants without right or authority were committing on it the acts complained of.

Mr. P. Mulwa for the 1st defendant council submitted that his client or officers had in no way trespassed over the plaintiff’s land and that if such a thing had taken 10 place the plaintiff would do well to deal directly with the trespassers whom the 1st defendant had nothing to do with. Mr. Mulwa said that

no prima facie case had been made out against his client.

Mr. F. Mulwa for the 2nd, 5th and 6th defendants was equally hard put to see what case had been made out against his clients. He posited that even as they had a problem with the way the plaintiff got the title to the property, if any loss or damage is caused, a monetary compensation would do.

The court heard that the 3rd and 4th defendants were served with due processes 20 but they did not enter appearance and/or oppose this application.

After hearing all involved this court is satisfied that the plaintiff, the owner of the subject plot, is entitled to the temporary injunction sought. It has the title to the land and has not allowed the defendants to do anything on it or continue any things started thereon.

This court was however not satisfied from the grounds in the body of the application, the deposition by affidavit or Mr. Kavila's submission that the 1st defendant has done any of the things complained of. Without a prima facie case being made out against the council at this point, it would not be worth much to issue an injunction against.

But the 3rd and 4th defendants who did not enter appearance or oppose this application by themselves, agents or whoever is acting under them on the plaintiff's 10 land they are enjoined from doing that until this suit is determined or further orders of the court.

The 2nd, 5th and 6th defendants who swore an affidavit of 27.3.2001 through the 2nd defendant, do not deny entry and committing acts complained of on the plaintiff's land. They say, and that does not appear pertinent yet, that the plaintiff's title had no good root and:

“5. That the plaintiffs have already been fully compensated for the loss of the suit land by way of surrender and re-allocation and may not 20 therefore suffer irreparable damages at all.”

Incidentally there was no evidence of surrender and reallocation of the suit premises, let alone evidence of compensation. In sum and save as against the 1st defendant, the injunction issues as set out above. If the defendants are allowed to alter the nature of use intended (to build light industries) of the suit land now it is not considered that monetary compensation will do later. Orders accordingly.

Delivered on 30th May 2001.

J. W. MWERA

JUDGE