



REPUBLIC OF KENYA



KENYA LAW
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**Wanyilu & another v Deputy County Commissioner Masinga District
& 3 others; Matheka (Interested Party) (Environment & Land Petition
15 of 2019) [2024] KEELC 6510 (KLR) (7 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6510 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND PETITION 15 OF 2019
CA OCHIENG, J
OCTOBER 7, 2024
IN THE MATTER OF THE CONSTITUTION OF KENYA 2010
AND
IN THE MATTER OF ARTICLES 47, 22, 23 AND 165 OF THE
CONSTITUTION OF KENYA, 2010
AND
IN THE MATTER OF SECTION 39 (A) TO (G), 3 (A) TO (D), 7, 9(1)
(4), 11(1) A, E, H (2) (A) TO (D) OF THE FAIR ADMINISTRATIVE
ACT 2015

BETWEEN

YULA WANYILU 1ST PETITIONER

KISEVU MWEU 2ND PETITIONER

AND

DEPUTY COUNTY COMMISSIONER MASINGA DISTRICT 1ST
RESPONDENT

DISTRICT LANDS REGISTRAR, MACHAKOS 2ND RESPONDENT

CHIEF LANDS REGISTRAR 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

AND

MUSYOKI MATHEKA INTERESTED PARTY



RULING

1. What is before Court for determination is the Interested Party's Amended Notice of Motion Application dated the 24th May, 2023 brought pursuant to Article 40 of *the Constitution*, Sections 1A, 1B and 3A of the *Civil Procedure Act* and Rule 3 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013. The Interested Party seeks the following Orders:-
 1. Spent
 2. Spent
 3. That an Order of injunction be issued restraining the 1st and 2nd Respondents and or their agents, servants, employees not limited to Kisovo Mweu, Paul Muli Kisovo and Titus Musyoka Kisovo from interfering with or otherwise engaging in actions of sale of Plot Number Masinga/Kangonde/Adj. Section No. 1152 pending the hearing and determination of the cause herein.
 4. That the OCS Masinga Police Station does ensure the compliance of this order.
 5. That the costs of this application be borne by the Respondents.
 6. Any relief that this Honourable Court may deem fit.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Musyoki Matheka where he deposes that he is the registered owner of land parcel number Masinga/Kangonde/Adj. Section No. 1152 which was subject of litigation before the Minister as the case No. 258 of 2006, whereby the Appeal he had lodged to the Minister as against the 2nd Respondent was allowed and he was given the aforementioned property. He contends that the Petition relating to Masinga/Kangonde/Adj. Section No. 1153 and Masinga/Kangonde/Adj. Section No. 1152 as filed by the 1st and 2nd Petitioners is yet to be determined but parties have taken directions on the said Petition and he has filed his Replying Affidavit together with submissions.
3. He claims the trespassers namely Kisovo Mweu, Paul Muli Kisovo and Titus Musyoka Kisovo under instructions of the 1st and 2nd Petitioners have encroached on parcel number Masinga/Kangonde/Adj. Section No. 1152, yet they had been in occupation of Masinga/ Kangonde/Adj. Section No. 791 as they are close relatives of the Petitioners. Further, that the said persons have begun to sell portions of the said land, without his consent.
4. He avers that the 1st and 2nd Petitioners through Kisovo Mweu, Paul Muli Kisovo and Titus Musyoka Kisovo together with third party buyers have occasioned wanton acts of destruction of trees and vegetation on Masinga/Kangonde/Adj. Section No. 1152 causing him, irreparable harm and damage.
5. He reiterates that as a result of the illegal and unlawful acts of the 1st and 2nd Petitioners together with their agents, he has been unable to make use of his parcel of land registration number Masinga/Kangonde/Adj. Section No. 1153.
6. The Petitioners and Respondents failed to file their respective Affidavits to oppose the instant Application which was canvassed by way of written submissions.



Analysis and Determination

7. Upon consideration of the instant Notice of Motion Application including the Supporting Affidavit and submissions, the only issue for determination is whether the Interested Party is entitled to orders of interlocutory injunction restraining the Petitioners or their agents from dealing with land parcel number Masinga/Kangonde/Adj. Section NO. 1152, pending the outcome of the Petition.
8. On whether the Interested Party has established a prima facie case with a probability of success at the trial, I will rely on the principles as enunciated in the case of Giella Vs Cassman Brown & Company (1973) EA 358 including the description of a prima facie case as stated in the case of Mrao Ltd Vs First American Bank of Kenya & 2 Others (2003) KLR 125.
9. The background of this Petition revolves around ownership of Masinga/Kangonde/Adj. Section No. 1152 and Masinga/ Kangonde/Adj. Section No. 1153 and the procedure the Respondents adhered to, in resolving the dispute. The Petitioners claim their rights to fair administrative action was violated and they seek various orders from this Court. The Interested Party who owns Masinga/Kangonde/Adj. Section No. 1152 claims the Petitioners through their aforementioned agents have trespassed thereon and are selling portions of the land to third parties.
10. Looking at the documents presented by the Interested Party, except for photographs of vacant land, I note there is no proof of the alleged sale of the land nor interference. Insofar as the instant Application is not opposed, I opine that the burden of proof was upon the Interested Party to prove sale and encroachment but he has failed to do so.
11. In the circumstances, I find that the Interested Party has not established a prima facie case to warrant the orders as sought. Further, in relying on the case of Nguruman Limited Vs Jan Bonde Nielsen, where the Court of Appeal held that where a party fails to prove a prima facie case, the Court need not deal with the remaining two limbs on injunction, and I will decline to do so.
12. Be that as it may and in the interest of justice, and invoking the inherent jurisdiction of this court, I find that it would be pertinent to preserve the substratum of this Petition and will hence issue an order of status quo pending the outcome of the Petition.
13. In the foregoing, I will disallow the Notice of Motion Application dated the 24th May, 2023 but make the following orders:-
 - a. The obtaining status quo be maintained where no party should interfere with the person in occupation of the suit property pending the outcome of the Petition.
 - b. Costs in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 7TH DAY OF OCTOBER, 2024.

CHRISTINE OCHIENG

JUDGE

In the presence of:

Nzilani for Interested Party

No appearance for Respondents

No appearance for Petitioner



Court Assistant – Simon/Ashley

