



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 8 OF 2020

MONICA RWINU NDUNGUPLAINTIFF

VERSUS

EDWARD KAMAU NDUNGU1ST DEFENDANT

LAND REGISTRAR MACHAKOS.....2ND DEFENDANT

THE HON. ATTORNEY GENERAL.....3RD DEFENDANT

RULING

1. In the Notice of Motion dated 28th January, 2020, the Plaintiff has sought for the following reliefs:

a. That this Honourable Court be pleased to issue an order for temporary injunction, restraining the 1st Defendant/Respondent by himself, his agents, servants and/or employees, from trespassing into, alienating of disposing off, damaging and or laying waste to the property known as Title No. Donyo Sabuk/Donyo Sabuk West Block 1 – 234, pending the hearing and determination of this suit.

b. That the 2nd Defendant/Respondent do ensure the observance of the above orders.

c. That the costs be in the cause.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that she is the sole beneficiary of the Estate of Ndungu Mugo (*deceased*); that she summoned a meeting of all beneficiaries to the Estate of the deceased in July, 2019 and that at the said meeting, the 1st Defendant informed her that Share number 2079 at Muka Mukuu Farmers' Co-operative Society Limited was gifted to him.

3. It was the deposition of the Plaintiff that on further inquiry, she discovered that in the year 2007, the 1st Defendant had applied for the transfer of the said share and that the endorsement of the share in favour of the 1st Defendant was forged.

4. The Plaintiff deponed that the 1st Defendant was once an employee of Muka Mukuu Farmers' Co-operative Society Limited (*the Society*) and that the 1st Defendant tampered with the deceased's share certificate and transferred it to himself.

5. According to the Plaintiff, she also found out that the original share certificate issued on 18th April, 1983 bore the name of the 1st Defendant's wife, Elizabeth Njeri Kamau, as the next of kin of the deceased and that the 1st Defendant fraudulently transferred the deceased's share to himself while knowing that the same had been vested in her.

6. The Plaintiff finally deponed that in the year 2013, the 1st Defendant transferred to himself plot number 157 allocated to the deceased and that the 1st Defendant acquired a Title Deed for the land under dispute being plot number 5-022.

7. In reply, the 1st Defendant deponed that the shares in Muka Mukuu Farmers' Co-operative Society Limited were bought by his late father, Ndungu Mugo (*deceased*); that he lived with the deceased between 1988 to 1997 when he died and that he is the one who took care of the deceased.

8. According to the 1st Defendant, long after his father's death, he discovered that his deceased father had nominated him as the sole beneficiary of his shares and land in the Society and that the said shares and land did not belong to the Estate of the deceased. Both the Plaintiff and the Defendants filed brief submissions which I have considered.

9. It is not in dispute that vide the Certificate of Confirmation of a Grant dated 30th October, 1998, the court in Nairobi High Court Succession Cause No. 319 of 1997 distributed the Estate of the late Ndungu Mugo (*the deceased*).

10. The Certificate of Confirmation of a Grant shows that the Plaintiff was the sole beneficiary of the Estate of the deceased, and was entitled to all the properties of the deceased, including the shares in Muka Mukuu Farmers' Co-operative Society Limited.

11. Although the Certificate of Confirmation of a Grant does not specifically refer to share number 2079, it is the Plaintiff's case that the said share formed part of the Estate of the deceased, and that the 1st Defendant caused it to be transferred to his name. The 1st Defendant's case is that share number 2079 was transferred to him by the deceased way before his death, and that the deceased was his father.

12. The share number 2079 annexed on the Plaintiff's Affidavit was issued to the deceased on 11th August, 1969. Pursuant to the said share, the deceased was allocated plot number 5-022 on 18th April, 1983. The copy of the Share Certificate shows that the late Ndungu nominated the 1st Defendant to take over the said share on 14th November, 2007, a fact the Plaintiff has disputed.

13. Considering that the issue of whether the deceased transferred the share number 2079 which gave rise to the suit property or not will be determined after trial, the prevailing *status quo* of the suit property should be maintained pending the hearing of the suit.

14. Indeed, in view of the fact that a Title Deed in respect of the suit property was issued in favour of the 1st Defendant on 31st May, 2016, and the Plaintiff having admitted that a portion thereof has been transferred to a third party, an injunction as framed by the Plaintiff will not be apt.

15. For those reasons, this court makes the following orders:

a. The prevailing status quo in respect of land known as Donyo Sabuk/Donyo Sabuk West Block 1-234 to be maintained pending the hearing and determination of the suit.

b. Each party to cater for his/her own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 16TH DAY OF APRIL, 2021.

O. A. ANGOTE

JUDGE