

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 38 OF 2010

JOSHUA MUNYWOKI.....PLAINTIFF

VERSUS

PATRICK MUKONZA NZIOKI.....DEFENDANT

RULING

1. The application dated 22nd February, 2010 seeks orders that an order of injunction do issue restraining the Defendant by himself, his servants, agents and/or employees from carrying on construction work, alienating or in any manner whatsoever from interfering with land parcel number KITETA/NGILUNI/2154, pending the inter-parte hearing of this application and/or final determination of this suit.

2. It is stated in the affidavit in support that the Applicant's purchased the suit property from the Respondent in the year 1986. The Applicant's complaint is that in the month of January, 2010 the Respondent entered the aforesaid land and started committing acts of wanton destruction and precluded the Applicant from entering the said land.

3. The application is opposed. It is the Respondent's contention that he is the registered owner and the one in possession of the suit property. The Respondent denied having sold the suit property to the Applicant. According to the Respondent, the only parcel of land he sold to the Applicant was a portion of KITETA/NGILUNI/1211. The Respondent has not denied having refused the Applicant entry to the land in question. The Respondent further stated that his title to the land in question is a first registration and that the Applicant has no right to the same. That the land in question is agricultural land and no consent to transfer the same was obtained from the Land Control Board.

4. The application was canvassed by way of written submissions which I have duly considered.

5. It is common ground that the Respondent is the registered owner of the suit land. Although the Respondent has stated that the land he sold to the Applicant is land parcel number KITETA/NGILUNI/1211, no sale agreement or any other document was exhibited to support the said claim. On the other hand, the Applicant has annexed the sale agreement for land parcel no. KITETA/NGILUNI/2154.

6. Although the question of failure to obtain the consent of the Land Control Board was raised, it is noted that the Applicant's claim to the occupation of the land dates back to 1986 while the alleged acts of destruction are said to have started in the year 2010.

7. Prima facie, the Applicant's case meets the threshold for grant of the orders sought. Consequently, I allow the application with costs to the Applicant.

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B. THURANIRA JADEN

Dated and delivered at Machakos this 7th day of May, 2015

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B. THURANIRA JADEN

JUDGE