



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**MISC. CIVIL APPLICATION NO 141 OF 1998**

IN THE MATTER OF THE APPLICATION BY **MARTIN MATEE MUSOMBA**

**MARTIN MATEE MUSOMBA ..... PLAINTIFF/APPLICANT**

**VERSUS**

- 1. YULU MUSOMBA**
- 2. ANNE NDUNGE DAVID**
- 3. MASILA WAMBUA**
- 4. MAILU MUSAU NZIVO ..... DEFENDANTS/RESPONDENTS**

**RULING**

1. The Application dated 22/11/2011 seeks orders that a temporary order do issue restraining the Defendants/Respondents from entering, dealing, trespassing, alienating and/or otherwise whatsoever interfering with parcels of land **nos. 2069** and **1474** situated in **Makueni District** until the application herein dated 20/12/2000 is heard and finally determined.
2. The application is supported by the affidavit of the Applicant **Martin Matee Musomba**. It is deposed that the Applicant is the absolute proprietor of plots known as **Nos 2069** and **1474** situated at **Uvete Adjudication Section, Kilungu Division in Makueni**. The Applicant's complaint is that when **Uvete area** was declared a **Land Adjudication Section**, an objection was lodged and the **Land Adjudication Committee** which excised the **plots No. 2069** and **1474** from plot **No. 695** and plot **No. 672** respectively and given to the 1<sup>st</sup> Respondent, **Yulu Musomba** and the 2<sup>nd</sup> Respondent, **Anne Ndunge David**. That the Applicant protested to the **Machakos District Lands Adjudication Committee** and subsequently lodged an appeal with the Minister but the appeal was dismissed. The Applicant then proceeded to file the Judicial Review proceedings herein then subsequently filed the instant application.
3. It is further averred by the Applicant that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have sold the aforesaid respective parcels of land to the 3<sup>rd</sup> and 4<sup>th</sup> Respondents who have trespassed into the Plaintiff's aforesaid **plot No. 2069** and **1474** and purported to take physical possession of the same and are uprooting trees, cutting down trees and burning charcoal while issuing threats to the Applicant.
4. The Respondents did not file any affidavit in reply or grounds of opposition but their counsel, **Mr Kisongo** submitted on questions of law.
5. I have perused the record and considered the submissions by the counsels for the respective parties.
6. It is apparent that the application dated 3/10/98 seeking leave to institute the Judicial Review proceedings was filed on 5/10/98. The leave was granted on 16/4/99. It is noted from the application seeking leave that there was no prayer for the leave sought to apply as a stay of the Minister's determination made on 22/7/98. The substantive (amended) **Notice of Motion** dated 20/12/2000 was filed on 2/1/2001 and the same is still pending.

7. On 24/11/2011, the instant **Chamber Summons** application dated 22/11/2011 was filed. This was about 13 years from the date the Applicant instituted the Judicial Review proceedings herein. The question left begging for answers is why there has been inordinate delay in prosecuting the substantive motion for Judicial Review. Instead the Applicant filed the application at hand seeking restraining orders against the Respondents.
8. I have considered the provisions of **section 29 (1)** of the **Land Adjudication Act Cap 284 Laws of Kenya** which make the determination of appeals by the Minister final. I also bear in mind the scope of Judicial Review proceedings. The conclusion I have reached is that the Applicant's case fails to meet the threshold for the grant of injunctive orders (*see Giella -vs- Cassman Brown & Co. Ltd. & Another [1973] EA 358*).
9. Consequently, the application is dismissed with costs.

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**B. THURANIRA JADEN**

**JUDGE**

Dated and delivered at Machakos this **15<sup>th</sup>** day of **May 2014**.

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**B. THURANIRA JADEN**

**JUDGE**