



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 47 OF 2017

BENSON KYALO MUTULA

MWANGANGI MUTULA.....PLAINTIFFS

VERSUS

POSTAL AND TELECOMMUNICATIONS EMPLOYEES.....1ST DEFENDANT

HOUSING CO-OPERATIVE SOCIETY LTD.....2ND DEFENDANT

CHARLES MWANGI MUCHIRI.....3RD DEFENDANT

ALEX ISOE MOSETI (*Being Trustees*

of P & T Housing Co-operative Society Ltd).....4TH DEFENDANT

RULING

1. In the Application dated 23rd January, 2018, the Plaintiffs are seeking for the following orders:

a. That the Defendants and/or their agents, servants be temporarily restrained from constructing, alienating and/or transferring to other parties L.R. Mavoko Town Block 2/63 and Mavoko Town Block 2/170 pending the hearing and determination of this case.

b. That costs be provide for.

2. The Application is premised on the grounds that the Defendants are in the process of alienating the suit properties and that unless the Application is allowed, the entire suit will be rendered nugatory.

3. The Respondents filed Grounds of Opposition in which they averred that the Application is incompetent; that the Application has been filed by an advocate who is not properly on record and that the Application is an abuse of the process of the Court.

4. The Plaintiffs' advocate filed his submissions in which he submitted that during the pendency of these proceedings, the Respondents deliberately chose to unlawfully and illegally assemble building materials on the suit land; that the Respondents have not controverted the depositions in the Plaintiff's Affidavit and that the Plaintiff has established a prima facie case with chances of success.

5. This suit was filed by the Plaintiffs in the High Court in the year 2014. In the Plaintiff, the Plaintiff is seeking for a declaration that the sale transactions in respect of Mavoko Town Block 2/63 and 170 was null and void for want of the consent of the Land Control Board; cancellation of the Titles that were issued in respect of the two parcels of land and in the alternative, for the Defendants to pay the balance of the outstanding purchase together with interest.

6. The record shows that the Defendants entered appearance in the matter on 27th June, 2014. The 2nd, 3rd and 4th Defendants filed their joint Defence on 24th June, 2014.

7. Although the Defence was filed in this matter on 24th June, 2014, this matter proceeded as undefended on 14th October, 2014. However, the Plaintiffs never closed their case. The Plaintiffs have never fixed the matter for hearing since then.

8. It is not clear from the Plaintiff's Affidavit if the suit land has since been transferred to the Defendants or not. It is also not clear to this Court the specific transaction that transpired between the Plaintiffs and the Defendant.

9. The Plaintiffs having failed to annex the Sale Agreement that they entered into with the Defendants and the copies of the title documents or extracts of the registers for the two parcels of land, I find and hold that they have not established a prima facie case with chances of success. Indeed, the reading of the Plaint supports the position that it is the Defendants who are in occupation of the suit land. The Plaintiffs will not suffer any irreparable damage if the injunctive orders are not granted.

10. In any event, the Plaintiffs are guilty of laches for having not filed the current application in the year 2014, or even attempted to prosecute the suit expeditiously.

11. For these reasons, I dismiss the Application dated 23rd January, 2018 with costs.

DATED, DELIVERED AND SIGNED AT MACHAKOS THIS 25TH DAY OF JANUARY, 2019.

O.A. ANGOTE

JUDGE