



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 436 OF 2017**

**JULIANA MBULA MULI.....PLAINTIFF**

**VERSUS**

**EDNA MUNINI.....DEFENDANT**

**RULING**

1. In the Notice of Motion dated 2<sup>nd</sup> November, 2017, the Plaintiff is seeking for the following orders:

***a. An order of temporary injunction be issued against the Respondent by herself, her servants and/or agents restraining them from trespassing and/or dealing with the Applicant's land and/or Plot No. 600 Komarock Ranch pending the hearing and determination of the main suit.***

***b. Costs of this Application be provided for.***

2. The Application is premised on the grounds that the Plaintiff is the Defendant's co-wife; that parcel of land known as Plot No. 600 Komarock Ranch (*the suit property*) belongs to the Plaintiff and that on 16<sup>th</sup> July, 2016, the Defendant trespassed on the suit land.

3. In her Affidavit, the Plaintiff deponed that she bought the suit land from one Simon Mwangangi Mutuku vide two Agreements which were executed in the years 2004 and 2005; that she constructed a house on the suit land and that the Defendant trespassed on the said land, demolished the house thereon and carted away building and roofing materials.

4. In response, the Defendant deponed that her late husband, David Muindi Muli (*deceased*) purchased the suit land for Kshs. 43,000; that her late husband purchased the suit land after borrowing money from the Co-operative Bank and that she is the one who was in possession of the land until the year 2013 when the Plaintiff started claiming that the land was hers.

5. It was the deposition of the Defendant that on 30<sup>th</sup> May, 2014, the Chief of Komarock Location determined the dispute in her favour; that the Plaintiff is not one of the beneficiaries of the Estate of the late David Muindi Muli and that the Public Trustee petitioned the court for a Grant of Letters of Administration for the Estate of David Muindi Muli in Machakos Succession Cause No. 320 of 2013.

6. The Defendant finally deponed that as the rightful heir to the Estate of the late David Muindi Muli, she sold the suit land to Aume Next Frontier Investment; that the Agreement that the Plaintiff is relying on is forged and that the Plaintiff does not have a legal or equitable interest over the suit land.

7. In the Supplementary Affidavit, the Plaintiff deponed that the Defendant concealed and suppressed material facts while prosecuting Machakos Succession Cause No. 320 of 2013; that the Certificate of Confirmation of Grant dated 28<sup>th</sup> November, 2014 was obtained unlawfully and that in any event the suit property does not form part of the deceased's Estate.

8. Both the Plaintiff's and the Defendant's advocate filed brief submissions which I have considered.

9. The Plaintiff's case is that she purchased Plot No. 600 Komarock Ranch from one Simon Mwangangi Mutuku. The Plaintiff produced in evidence the handwritten Agreements dated 30<sup>th</sup> December, 2004 and 23<sup>rd</sup> April, 2005. The first Agreement was witnessed by Tobias M. Muthengi, Jackson Muasa, Kimeu Kilonzo and David Muli. The second Agreement was witnessed by Tobias Muthengi and Jackson Muasa. It was the deposition of the Plaintiff that after purchasing the said land, she put up her house which was demolished by the Defendant and her sons. Although the Defendant's sons were charged in Kangundo Criminal Case No. 672 of 2016 for malicious damage to property, they were all acquitted.

10. On the other hand, the Defendant's case is that her late husband, David Muindi Muli, bought the suit land from Mwangangi Mutuku, who is the same person that allegedly sold to the Plaintiff the land. Ironically, the two Agreements that the Defendant is relying on bears the same

date as the Plaintiff's Agreements, that is, 30<sup>th</sup> December, 2004 and 23<sup>rd</sup> April, 2005. Again, both sets of Agreements were witnessed by the same people, that is, Tobias M. Muthengi and Jackson Muasa. However, none of these purported witnesses swore an Affidavit.

11. Although the Defendant's husband died on 26<sup>th</sup> January, 2010, and the Certificate of Confirmation in respect to his Estate was issued in favour of the Defendant and her children, the Certificate of Confirmation shows that the Defendant's late husband did not own any immovable assets.

12. The failure by the Defendant to list the suit land as one of the Assets of the deceased when she applied for the Letters of Administration takes the suit land out of the purview of the Estate of the late David Muindi. That being the case, the Defendant cannot claim that she has since sold the suit land which she inherited from her late husband.

13. The failure by the Defendant to include the suit land in the Certificate of Confirmation of a Grant that was issued on 28<sup>th</sup> November, 2014 reinforces the Plaintiff's deposition that she is the one who bought the suit land, and not the late David Muindi. Indeed, it is the Plaintiff who had been in possession of the land until when the house that she had put up on the land was demolished by unknown people.

14. Considering that the suit land is not part of the Estate of the deceased, the Defendant did not have the legal capacity to sell it to Aume Next Frontier Investment Limited. That being the case, I find that the Plaintiff has established a prima facie case with chances of success. Therefore, I allow the Application dated 2<sup>nd</sup> November, 2017 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 14<sup>TH</sup> DAY OF JUNE, 2019.**

**O.A. ANGOTE**

**JUDGE**