



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 207 OF 2017

DAVID MAKAU WAMBUAPLAINTIFF

VERSUS

SCOLASTICA MUMO MUTETI1ST DEFENDANT

RAPHAEL NDAMBUKI MUTETI2ND DEFENDANT

RULING

1. The Plaintiff has moved this court vide an Application dated 4th May, 2017 seeking for the following orders:

a. That this Honourable Court be pleased to grant an order restraining the Defendants/Respondents by themselves, their servants, agents and anyone claiming under them or through them from trespassing, destroying property and unlawfully interfering with the Plaintiff's parcel Machakos/Mutituni/2298 pending hearing and determination of the suit herein.

b. That the Defendants/Respondents bear the costs of the Application herein.

2. According to the Plaintiff's Affidavit, parcel of land known as Machakos/Mutituni/2298 originally belonged to one Paul Muteti Musyoki (*deceased*) who was the husband of the 1st Defendant and the father of the 2nd Defendant; that Paul Muteti sold the land to Peter Munyao (*deceased*) and that the sons of Peter Munyao sold the suit land to him vide an agreement dated 1st July, 2007.

3. It is the Plaintiff's case that the Defendants acknowledged his purchase but demanded that he pays them Kshs. 30,000 in order to transfer the land to him and that he paid the said amount to the Defendants on 19th August, 2007.

4. The Plaintiff has deponed that on 15th April, 2007, the Defendants invaded the suit land and cut down his bananas plants and the fence; that the said destruction was assessed by the Kenya Forest Service at Kshs. 421,575 and that he is now unable to access his house which is situated on the suit land.

5. In the Replying Affidavit, the 1st Defendant deponed that their late father never owned land known as Plot No. 2298; that their father sold the land to one Peter Munyao and that the impugned activities that they undertook on 15th April, 2017 were undertaken on land known as Mitaboni/Mutituni/2511 and not on the suit land.

6. The 2nd Defendant deponed that the land the Plaintiff purported to buy is not identified in the agreement and that parcel of land number 2511 is his land. According to the 1st Defendant, the Plaintiff did trespass on the said land.
7. In the Further Affidavit, the Plaintiff deponed that the Sale Agreement of 1st July, 2007 described the land he bought as Machakos/Mutituni/ 2298; that it seems the land he bought was Mitaboni/Mutituni/2511 and that the land has not changed on the ground.
8. The Plaintiff and the Defendants filed brief submissions which I have considered.
9. The Plaintiff has produced in evidence the agreement dated 1st July, 2007 showing that he purchased “a piece of land” from the family of Peter Munyao Musyoki being Plot number 2298 for Kshs. 230,000. The said agreement was duly signed and witnessed.
10. Another agreement dated 19th August, 2008 between the family of Paul Muteti, through Raphael Ndambuki Muteti and Scholastica (*the Defendants*) acknowledged receipt of Kshs. 30,000 for the purpose of sub-dividing the land.
11. The Defendants have not denied signing the agreement of 19th August, 2008 for the land which had been sold by their father to Peter Munyao, which was later sold to the Plaintiff.
12. The Defendants have deponed that the crops which they cut down are on Plot No. Mitaboni/Mutituni/2511 and not on the suit land.
13. I have perused the certificate of official search for Plot No. 2511. According to the said search, the land was registered in favour of the 2nd Defendant on 5th March, 2012, five (5) years after the Plaintiff had bought the land.
14. It is therefore obvious that by the time the Plaintiff bought the suit land belonging to the Defendants’ father, the same had not been formally sub-divided.
15. However, the evidence before me shows that the Plaintiff took possession of the land he bought, believing that it is Plot No. 2298, and even went ahead to develop it by putting up a permanent building, fencing the land and planting bananas. The Defendants have acknowledged that these are the bananas and the fence that they destroyed.
16. It would appear from the evidence before me that the Defendants took advantage of the confusion in respect to the parcel numbers to destroy the Plaintiff’s crop and fence without a court order. That, in my view, are activities of people who have no respect for the rule of law and who, in the course of time, should be made to pay for the said destruction.
17. My analysis above leads to only one conclusion, that the Plaintiff should be protected from the Defendants’ actions of trespassing on either land known as Machakos/Mutituni/2298 or Mitaboni/Mutituni/2511.
18. For those reasons, I allow the Plaintiff’s Application dated 4th May, 2017 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 26TH DAY OF JANUARY, 2018.

O.A. ANGOTE

JUDGE