



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MACHAKOS
ELC. CASE NO. 8 OF 2017

SCOLASTICA MUENI NZOMO1ST PLAINTIFF

JOSPHAT KIOKO NZOMO.....2ND PLAINTIFF

VERSUS

FRANCIS MWANZIA.....1ST DEFENDANT

COUNTY GOVERNMENT OF MACHAKOS.....2ND DEFENDANT

CHIEF LAND REGISTRAR3RD DEFENDANT

ATTORNEY GENERAL.....4TH DEFENDANT

RULING

1. In his Application dated 12th January, 2017 the Plaintiffs are seeking for the following orders:

a. That this Honourable Court be pleased to issue an interim order of injunction restraining the 1st and 2nd Defendants/Respondents herein and/or their agents/servants/employees from holding themselves as the registered owners, entering into, trespassing, cultivating or in any way interfering with the Applicant use, enjoyment, possession and occupation of the parcels of land known as Plot No. 918 and Plot No. 919 Kivaa/Kyondoni pending hearing of the main suit.

b. That the cost of this Application be provided for.

2. According to the 1st Plaintiff's Affidavit, the Plaintiffs are the registered proprietors of plot number 65 Kivaa/Kyondoni; that there was a dispute in respect of Plot Nos. 65 and 66 with one Ruth Ndindi Ngila vide Case No. KIV/KYO/005/1998 and that the adjudication Tribunal delivered its decision on 23rd July, 2001.

3. It is the Plaintiff's case that the adjudication Tribunal drafted a sketch map indicating the stretch of plot 65 and that the titles issued in respect of Plot Nos. 65 and 66 do not reflect the sketch drawn by the adjudication Tribunal.

4. According to the 1st Plaintiff, when they conducted an official search, they discovered that the 1st and 2nd Defendants have illegally caused the sub-division of Plot No. 918 and 919 Kivaa/Kyondoni

measuring 7.22Ha and 0.6Ha registered in their names respectively.

5. In his Replying Affidavit, the 2nd Defendant's Chief Legal Officer deponed that the 2nd Defendant legally acquired land parcel number Kivaa/Kyondoni/919 measuring approximately 0.6Ha which is reserved as a public place; that the Plaintiff has not met the threshold required for the equitable relief of injunction and that the Application should be dismissed.

6. In his submissions, the Plaintiffs' advocate submitted that the Plaintiffs were awarded the land known as Plot Numbers 65,918 and 919 Kivaa/Kyondoni by the Land Adjudication Tribunal; that as per the Award of the Tribunal, the Plaintiffs' land stretched to Tana River bordering Mbeere District and that they have been in possession of the said land.

7. Counsel submitted that the Respondents unlawfully sub-divided their land to create the suit land and that the Respondents have not stated how they acquired the suit land.

8. The 2nd Defendant's advocate submitted that land parcel number 919 is registered as a public facility; that the 2nd Defendant is registered as the proprietor of the said land and that the 2nd Defendant is not aware of any adjudication proceedings in respect to the said land.

9. The 1st Defendant did not respond to the Application.

10. The Plaintiffs have exhibited the proceedings of the Kyondoni Land Adjudication Committee between themselves and one Ruth Ndindi Ngila in respect of Plot Nos. 65 and 66. The Committee, in their findings, found that the two plots belong to the Plaintiffs.

11. Other than the Award, the Committee came up with a detailed sketch plan of plot numbers 65 and 66 amongst other plots. In the said sketch plan, plot number 65 stretched all the way to Tana River. The sketch plan did not indicate the presence of plot numbers 918 and 919.

12. After the decision of the Land Committee, Ruth Ndindi appealed to the Arbitration Board pursuant to the provisions of the Land Adjudication Act. The Board dismissed the Appeal and approved the decision of the Committee.

13. The Defendants have not explained to this court how the suit properties were created considering that they have not denied that the land in question is trust land.

14. Indeed, the Defendants have not denied that the area in question was declared an adjudication section and the adjudication process was completed.

15. It is trite that the County Government can only acquire land which has been adjudicated for public purpose after setting apart such land and compensating the owners of the land.

16. Having failed to demonstrate the procedure they followed in processing the two titles, or if any setting a part of the land was done, I find that the Plaintiffs have established a prima facie case with chances of success.

17. I therefore allow the Application dated 12th, January, 2017 as prayed.

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

O.A. ANGOTE

JUDGE