



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. APPEAL NO. 79 OF 2006

TERESIAH SYOMBUA MUTUKUAPPELLANT

VERSUS

IDAH NDUKU MASYUKIRESPONDENT

RULING

1. In the Application dated 10th November, 2015, the Applicant is seeking for the following orders:

a. That the Appellant/Respondent whether by herself or through her servants, agents and/or employees or any other person whomsoever claiming under her or through her including but not limited to one John Ndile, Reuben Musyimi Kithenge, Julius Musumbi Masyuki and Veronica Mwelu Kithenge be restrained from trespassing, evicting or in any other manner whatsoever interfering with the Applicant and her family's quiet possession of the suit parcel of land no. Mwala/Myanyani/943 or from doing any other prejudicial act pending the hearing and determination of this Application and the appeal herein.

b. That the OCS Masii police station does ensure compliance of these orders.

c. That costs of this Application be in the cause.

2. In the Supporting Affidavit, the Applicant has deponed that she was the sole wife of the late Daniel Ngila; that when the deceased purported to conduct another marriage with the Appellant, she instituted bigamy proceedings against him and that he was convicted of the offence and sentenced to two (2) years probation by the court.

3. It is the Applicant's case that the Appellant/Respondent fraudulently caused parcel of land known as Mwala/Myanyani/943, which is her matrimonial home, to be transferred to her; that when she filed a case in Mwala Dispute Case No. 2 of 2004, it was decided that the land should be sub-divided into three plots and that when she filed an appeal with the Eastern Provincial Appeals Committee, it was decided that she gets 4 acres of the land and the Appellant/Respondent gets 1 acre and her late husband gets 2 acres to share with whomever he wants.

4. It is the Applicant's case that she is in grave danger of being evicted from her matrimonial home.

5. In reply, the Appellant/Respondent deponed that she is the absolute proprietor of the suit land; that she has lodged an appeal in respect to the decision of the Provincial Appeals Committee and that on 11th March, 2008, the High Court stayed execution of the Appeals Committee's decision and that she has no intention of sub-dividing the suit land.

6. Both the Applicants and Respondent's advocates filed their submissions which I have considered.
7. The Appeal before this court is in respect to the decision of the Eastern Provincial Appeals Committee's decision. Although the Memorandum of Appeal was filed on 2nd June, 2006, the Record of Appeal has never been filed by the Appellant to date.
8. The Appellant has not denied that indeed the Applicant has a matrimonial home on the suit land, and that she was the first wife of the deceased.
9. Considering that the issue of whether the decision of the Provincial Land Appeal's Committee was lawful or not will be dealt with by this Court after the Record of Appeal has been filed, I will not venture into the issue of whether the Applicant has a prima facie case or not.
10. However, considering that the Applicant has been living on the portion of the suit land, the most appropriate order to make is for the prevailing status quo to be maintained pending the hearing of the Appeal.
11. To enable the court settle the legal issues raised in the Appeal, the Appellant should file the Record of Appeal and fix the Appeal for hearing within six (6) months from the date of this Ruling.

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

O.A. ANGOTE

JUDGE