



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 136 OF 2017

DAVID KARUE KANYINGI.....PLAINTIFF

VERSUS

MUKA MUKUU FARMERS CO-OPERATIVE

SOCIETY LIMITED.....1ST DEFENDANT

PETER MUTIE.....2ND DEFENDANT

DAVID MULI NDOHA.....3RD DEFENDANT

RULING

1. In the Application dated 29th March, 2017, the Plaintiff is seeking for the following orders:

a. That this Honourable Court be pleased to grant a temporary injunction restraining the Respondents, their servant, agents, employees and/or any person duly authorized by them to act on their behalf from selling, transferring, alienating, disposing, partitioning, building or dealing in any way with those plots otherwise known as: - Kyeleni C Plot Numbers 437, 438, 439, 440, 441, 442 and 443 pending the hearing and determination of this suit.

b. That the costs and incidentals to this Application be provided for.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that he purchased the suit land from the 1st Defendant in 1996; that he balloted for the said land and was registered as an allottee of the same by the 1st Defendant and that he took possession for the suit properties.

3. The Plaintiff has deponed that in the year 2013, the 2nd Defendant purported to lay claim over the suit properties alleging that the 1st Defendant had allocated him the land and that the Defendants have encroached on his land.

4. In response, the Chairman of the 1st Respondent deponed that on 16th October, 2013, the Plaintiff filed a claim before the Co-operative Tribunal vide Claim No. CTC 500 of 2013 claiming ownership of the suit land; that the Tribunal dismissed his claim on account of jurisdiction and that according to the 1st Defendant's records, the Plaintiff has never been allocated land by the 1st Defendant as alleged.

5. It is the 1st Defendant's case that the Applicant has never been a shareholder or a member of the 1st Defendant and that the alleged plots are comprised of a large parcel of land measuring over 25,000 acres which is still in the name of the 1st Defendant.

6. The 1st Defendant's Chairman deponed that the documents that the Plaintiff is relying are forgeries and that the Applicant is not in physical possession of the suit land; that one of the Society members, Mr. Samuel Musyoka complained that the Applicant used his membership name and number 1077 to fraudulently acquire the said plots and that the Respondents are not trespassers.

7. The Plaintiff's advocate submitted that the Plaintiff is the beneficial owner of the suit land and in actual possession; that the Plaintiff has commenced development on the suit land and that the balance of convenience tilts in his favour.

8. The 1st Defendant's advocate submitted that the Plaintiff has not exhibited any certificate of ownership to proof ownership of the land; that the Applicant is not a member or former member of the 1st Defendant and that the Plaintiff has not established a prima facie case with chances of success.

9. The Plaintiff's suit is premised on his averment that he purchased the "*central farm*" plots from the 1st Defendant and Sammy Musyoka; that the 1st Defendant then registered him as the proprietor of the suit land and that he is entitled to the said land.

10. The 1st Defendant has denied that the Plaintiff has ever been its member or that he acquired the said land for a consideration.

11. Although the Plaintiff has claimed that he purchased the suit land, he did not annex any agreement to show that he purchased the said land either from Mr. Sammy Musyoka or the 1st Defendant.

12. Although the Plaintiff has annexed on his Affidavit copies of receipts from the 1st Defendant, the said receipts do not show the parcel number of the land that he was paying for.

13. The Plaintiff has also not annexed any document, like a certificate of allotment, to show that indeed the 1st Defendant allocated him the suit land or any document to show that he is a member of the 1st Defendant.

14. Indeed, in its Ruling of 25th February, 2015, in Co-operative Tribunal CTC 500 of 2013, the Tribunal found that the Plaintiff had not proved that he was a member of the 1st Defendant, and on that ground dismissed his claim. No appeal has been filed in respect to that finding.

15. In the circumstances, and on the basis of the evidence before me, I find and hold that the Plaintiff has not established a prima facie case with chances of success.

16. I therefore dismiss the Application dated 29th March, 2017 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23RD DAY OF FEBRUARY, 2018.

O.A. ANGOTE

JUDGE