



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 423 OF 2017

DOMINIC MWANGANGI MBINDYO1ST PLAINTIFF

PETER MWINZILA MBINDYO2ND PLAINTIFF

MARGARET JULIUS NZOMO.....3RD PLAINTIFF

VERSUS

STANLEY WAMBUA MWENGADEFENDANT

RULING

1. The Application by the Plaintiffs dated 2nd October, 2017 is seeking for the following orders:

1. That pending the hearing and final determination of the suit herein, the Defendant himself, or his servants, agents, representatives, employees, or whosoever else acting on the Defendant's behalf, instructions and/or directions be restrained from constructing and/or developing or in any manner whatsoever working on any portion of land parcels title numbers Yatta B2/Kwa-vonza/809 and Yatta B2/ Kwa-vonza/810.

2. That costs of this Application be awarded to the Plaintiffs/Applicants.

2. The Application is supported by the affidavit of the 1st Plaintiff who has deponed that he is one of the administrators of the Estate of the late John Mbindyo who was the registered proprietor of the suit properties.

3. According to the 1st Plaintiff, the suit properties, amongst others, were a sub-division of parcel of land known as Yatta B2/Kwa-vonza/201; that the suit properties were registered in the joint names of the Plaintiffs and that the Defendant, who is their uncle-in-law has commenced developing the suit land.

4. The 1st Plaintiff deponed that although the Defendant claimed that he was developing a parcel of land known as Yatta B2/Kwa-vonza/87, the said land is registered in the name of one Fredrick Sakayo Kithiia.

5. In response, the Defendant filed Grounds of Opposition and a Replying Affidavit.

6. The Defendant deponed that he is developing a plot number Kwa-vonza 78 at Kwa-vonza Trading Centre and not the suit land; that the Plaintiffs' land is outside Kwa-vonza market and that he has an allotment letter for his land.

7. The Defendant further deponed that a search at the County Government of Kitui shows that Plot No. Kwa-vonza/78 exists in their register and that he sought and obtained an approval to develop the said plot and that he has been paying rates for the said plot to the County Government of Kitui.

8. The Plaintiffs' advocate submitted that the Plaintiff has established a prima facie case with chances of success; that the Defendant has not exhibited a lay out plan of Kwa-vonza market to show the site of the said Plot No. 78 and that from the map that the Plaintiff has exhibited, there is no plot known as Plot No. 78 in the registration section.

9. The Defendant's advocate submitted that the Plaintiffs have not availed to the court a Surveyor's Report to confirm the alleged encroachment; that there are no competing claims of ownership and that it is the Defendant who is in possession of the land that he is developing.

10. According to the Defendant's counsel, the Plaintiffs are seeking to evict the Defendant from his land and that the Plaintiffs have not established a prima facie case with chances of success.
11. Both the Plaintiffs and the Defendant's advocate filed their respective authorities which I have considered.
12. The evidence before me shows that the Plaintiffs are the registered proprietors of parcel of land known as Yatta B2/Kwa-vonza/809 and 810. The Plaintiffs were registered as proprietors of the two parcels of land on 28th November, 2011 after the sub-division of Yatta B2/Kwa-vonza/201.
13. The Plaintiffs have annexed on their Affidavit the Registration Section of Kwa-vonza which shows the position of the suit land.
14. Although the Defendant has stated that he is developing a plot known as Plot No. 78 at Kwa-vonza which he was allocated by the then County Council of Kitui, he has not annexed any evidence to show that there is another Registration Section known as "*Kwa-vonza Trading Centre*" which is distinct from "*Kwa-vonza Registration Section*".
15. Having failed to annex a Development Plan for "*Kwa-vonza Trading Centre*", and in view of the fact that the Plaintiffs have availed a map showing the position of their plots on the ground, I find and hold that the Plaintiffs have established a prima facie case with chances of success.
16. Until evidence is called to show that Plot No. 78- Kwa-vonza is distinct from the suit land, an order of temporary injunction restraining the Defendant from developing the land he purports is Plot No. 78 should issue.
17. For those reasons, I allow the Application dated 2nd October, 2017 as prayed.

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

O.A. ANGOTE

JUDGE