



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 216 OF 2017**

**MWANIA NGUNGA .....PLAINTIFF**

**VERSUS**

**MUTUKU MWANIA .....DEFENDANT**

**RULING**

1. Vide his Application dated 10<sup>th</sup> May, 2017, the Plaintiff is seeking for temporary injunctive orders in the following terms:

***a. An order of temporary injunction be issued against the Respondent by himself, his servants and/or agents restraining them from dealing with the Land Parcel No. Mitaboni/Miumbuni Ngoleni/556 and Land Parcel No. Mitaboni/Miumbuni Ngoleni/4958 and evicting the Plaintiff/Applicant from the said land pending the hearing and determination of the main suit.***

***b. Costs of this Application.***

2. The Application is premised on the Affidavit of the Plaintiff who has deponed that he is the registered proprietor of parcel of land known as Mitaboni/Miumbuni Ngoleni/556 (*the suit land*); that on 13<sup>th</sup> March, 2001, he sub-divided his land into three portions, one for himself and the other two for his sons, including the Defendant and that the Defendant unilaterally caused his portion to be combined with his thus creating parcel number 4958.

3. The Plaintiff has deponed that the Defendant has threatened to evict him from the suit land.

4. In his Replying Affidavit, the Defendant deponed that the Plaintiff sub-divided his land being parcel number 556; that he allocated him parcel number 4958 and retained parcel number 556 and that the Applicant was persuaded by his daughter to file the current pleadings.

5. The Plaintiff's advocate submitted that the Defendant has grabbed the Plaintiff's portion of land and combined with his share.

6. On the other hand, the Defendant's counsel submitted that the Defendant obtained his title legally after the Plaintiff voluntarily sub-divided his parcel of land amongst his children.

7. The evidence before me shows that the Plaintiff was registered as the proprietor of parcel of land known as Mitaboni/Miumbuni Ngoleni/556 measuring 0.14Ha on 15<sup>th</sup> April, 2015.

8. According to the Plaintiff, he had sub-divided his land into three portions whereby he retained one portion, gave the Defendant one portion and gave his other son the remaining portion. The proceedings of the way the Plaintiff sub-divided the land shows that the Defendant agreed to this mode of division of the land.

9. The sentiments of the Plaintiff are supported by the report of the Assistant County Commissioner, Kathiani Ward, who after hearing the dispute, informed the Land Adjudication Officer to revert land parcel number 4958 to the Plaintiff.

10. The Defendant has not denied that indeed it is his father, the Plaintiff, who divided the land. It is therefore unlikely that he gave out the land to his two sons and left nothing for himself.

11. That being the case, and considering that the Defendant has not denied that the Plaintiff is indeed living on the suit land, I find that the Plaintiff has established a prima facie case with chances of success.

12. I therefore allow the Application dated 10<sup>th</sup> May, 2017 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2018.

O.A. ANGOTE

JUDGE