



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 390 OF 2017

PHILIP MUTUA KILONZOPLAINTIFF

VERSUS

ALEX KYALO MUTEMIDEFENDANT

RULING

1. The Application dated 18th September, 2017 by the Plaintiff is seeking for the following orders:

a. That pending the hearing and final determination of this suit, the Defendant/Respondent, his agents, servants, employees and/or nominees or whosoever be restrained by an order of injunction from trespassing, harassing, wasting, depositing any materials, constructing or in any other way from interfering with the Plaintiff/Applicant's property known as Plot No. 26A situated in Kathangaita - Mlolongo in Mavoko Sub-County of Machakos County.

b. The cost of this Application be borne by the Respondent.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that he is the owner of land known as Plot No. 26A situated in Kathangaita - Mlolongo in Mavoko Sub-County of Machakos County (*the suit land*).

3. The Plaintiff has further deponed that he acquired the suit land by virtue of his membership in “*New Era Vision Self Help Group*” which in collaboration with Beacon Beach Ranch Ltd issued him with a certificate of ownership number 424; that the Defendant trespassed on the land on 26th August, 2017 and that the Defendant has started developing the land.

4. The Defendant filed a Replying Affidavit in which he stated that he is the registered proprietor of Plot No. 26A; that the land was initially owned by Bemune Society before he purchased it and that he is the one who is in possession of the land.

5. According to the Defendant, “*New Era Society*” was just one of the entities that was allocated land by Bemune Society, and that the Plaintiff was given fake papers by the said Society.

6. Both the Plaintiff and the Defendant's advocate filed submissions which I have considered.

7. The Plaintiff and the Defendant are claiming being the owners of the suit land.

8. It would appear that the suit land is an unregistered parcel of land, whose ownership can only be ascertained at trial.

9. Indeed, from the documents exhibited by the Plaintiff and the Defendant, it is not clear to this court who between “*New Era Vision Self Group*”, “*Beacon Ranch Ltd*” and “*Bemune Society*” initially owned the land, and the circumstances under which the same was owned.

10. Until oral and documentary evidence is called, the court cannot determine the person who has a prima facie case with chances of success, or who may suffer irreparable damages unless the order is given.

11. Although it might appear that it is the Defendant who is in possession of the land, the most appropriate order to make is to bar the Defendant from dealing with the suit land until the matter is heard.

12. For those reasons, the court directs that:

a. The Defendant to remain in possession of the land pending the hearing of the suit. However, the Defendant should not sell, alienate, transfer or continue with developing of the suit land until this suit is heard and determined.

b. Each party to bear his own costs.

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

O.A. ANGOTE

JUDGE