



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 346 OF 2017

PRISCILLA NZISA MUTUA.....PLAINTIFF

VERSUS

JOHN SILA KINYAMASYODEFENDANT

RULING

1. In the Application dated 16th August, 2017, the Plaintiff is seeking for the following orders:

a. That the County Surveyor Machakos does prepare and issue a report to this court on the ground position of land parcel number Muvuti/Kiima-Kimwe/2900 viz a viz Muvuti/Kiima-Kimwe/2871 and in the said report indicate to court on which land parcel as of the date of the report has a foundation dug out, within such time frame as the court shall so order.

b. That an order of injunction be issued against the Defendant, his servants and/or agents and/or anyone claiming under them from entering upon, constructing on, cultivating, wasting and/or in any other manner interfering with the Plaintiff's land parcel number Muvuti/Kiima-Kimwe/2900 pending the hearing and determination of the main suit.

c. That the Officer Commanding Machakos Police Station does enforce the orders of this court.

d. That the costs of this Application be paid by the Defendant/Respondent.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that she is the registered proprietor of a parcel of land known as Muvuti/Kiima-Kimwe/2900; that he has been in possession of the land and that he has made several agricultural improvements on the said land.

3. The Plaintiff has further deponed that on or about 8th August, 2017, the Defendant trespassed on the suit land and begun digging a foundation for a structure they seek to construct; that the Defendant's buildings plans shows that he is building on parcel number 2891 and that there is no common boundary between the suit land and parcel number 2871.

4. It is the Plaintiff's case that the Machakos County Surveyor conducted a survey and confirmed the position of parcel number 2900.

5. The Plaintiff has deponed that the Defendant's claim is derived from Leonard Kimeu and Alex Muasya against whom he obtained an injunctive order in Machakos CMCC No. 568B of 2015.

6. According to the Plaintiff, although the County Surveyor issued to the Defendant Summons to attend a boundary identification to show the ground position of parcel numbers 2900 and 2871, he refused to attend to the exercise.

7. In response, the son of Kaswii Munguti deponed that the Defendant bought parcel number 2871 from his mother when she was alive; that her mother was the registered proprietor of parcel number 233 which was sub-divided and titles issued and that the Plaintiff is a fraudster whose title should be cancelled.

8. The other son of Kaswii Munguti, Alex Muasya, also filed a response and repeated the above deposition.

9. The Defendant deponed that he has no interest in parcel number 2900 which is claimed by the Plaintiff; that he is the registered proprietor of parcel number 2871 from Kaswii Munguti who was the registered proprietor for parcel number 233.

10. The Defendant deponed that the Plaintiff has been colluding with the area chief who has been misleading her on the actual location of parcel number 2900 and that the Plaintiff either bought a non-existent plot or was shown the wrong plot.
11. The Plaintiff's and the Defendant's advocates filed their respective submissions and authorities which I have considered.
12. The Plaintiff has annexed on his Affidavit the Certificate of official searches which shows that she was registered as the proprietor of parcel of land known as Muputi/Kiima-Kimwe/2900 on 16th September, 2015 and was issued with a Title Deed on 19th February, 2015.
13. According to the report of the County Surveyor dated 2nd March, 2016, he visited the site on 11th December, 2015 for the purpose of confirming the ground position of parcel number 2900.
14. In his report, the Surveyor has stated that the original parcel was number 233 whereby sub-sequent sub-divisions resulted into parcel number 2900 among others. The County Surveyor came up with the co-ordinates of parcel number 2900 and the sketch map identifying parcel number 2900 on the ground.
15. The Defendant on the other hand has deponed that he bought parcel number Muputi/Kiima-Kimwe/2871 from the late Kaswii Munguti and that he was issued with a Title Deed.
16. Although the Defendant has annexed a copy of the Title Deed for parcel number 2871 which was purportedly issued to him on 18th November, 2015, he has not annexed on his Affidavit the copy of the official search. It is not therefore clear to this court if the said Title Deed emanated from the lands office.
17. Although the Plaintiff has annexed the Surveyor's report showing the location of parcel number 2900 on the ground, the Defendant has not availed to this court any survey report.
18. Indeed, from the County Surveyor's report, parcel number 2900 does not border parcel number 2871 and it seems not to exist at all (*Parcel No. 2871*).
19. Considering that no evidence was produced by the Defendant of the existence of parcel number 2871 on the ground, and in view the County Surveyor's report indicating that it is only plot number 2900 which exists on the ground, I find that the Plaintiff has established a prima facie case with chances of success.
20. I therefore allow the Application dated 16th August, 2017 as prayed.

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

O.A. ANGOTE

JUDGE