

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 170 OF 2016

ROBERT KILONZO MUANGE.....1ST PLAINTIFF/APPLICANT

CHARLES MAKALE.....2ND PLAINTIFF/APPLICANT

(Suing on behalf of Ruptex Savings & Credit Sacco)

VERSUS

JOEL NGANDA.....DEFENDANT/RESPONDENT

RULING

1. In the Application dated 27th October, 2016, the Plaintiffs are seeking for the following reliefs from the court:

a. That pending the hearing and determination of this Application/suit, the Defendant/Respondent, their servants and/or agents or otherwise be restrained from trespassing, interfering, tampering with, occupying the land parcel No. Machakos/Katheka-Kai Block 4/66 which forms part of Katheka-Kai Branch.

b. That declaration that the Defendant/Respondent actions of trespassing, tampering with and interfering with peaceful enjoyment of the Plaintiffs/Applicants' land is malicious and unjustifiable hence unlawful.

c. Costs of this suit.

2. According to the Plaintiffs' Affidavit, he is the legal administrator of the Estate of Mbuli Mutua; that the said Mbuli had shares in Katheka-Kai Farmers Co-operative Society which they transferred to Ruptex Savings & Credit Sacco and that the said Ruptex became the owners of land known as Machakos/Katheka-Kai Block 4/66 (*the suit land*).

3. It is the deposition of the Plaintiffs that the Defendant has no right in respect of the suit land and that the Defendant has been trespassing on the suit land.

4. In the Replying Affidavit, the Defendant stated that he is the proprietor of the suit land and a beneficiary of the Estate of the late Mbuli; that he litigated over the suit land with the Plaintiffs' father in Tribunal Case No. 163 of 2001 and that he has filed summons in Machakos High Court Succession Cause No. 237 of 2002 for the revocation of the Letters of Administration that was issued to the 1st Plaintiff. The Defendant has further deponed that the 1st Plaintiff lodged a Judicial Review Application seeking to quash the decision of the Tribunal which was dismissed by the High Court.

5. The Plaintiffs' advocates submitted that the Defendant was not listed as a beneficiary in the grant that was issued in the year 2002; that the land in the decree in CMCC Misc. No. 8 of 2003 is poorly described and does not exist and that there was fraud on the part of the Defendant and Katheka-Kai Farmers Co-operative Society. The Defendant's submissions are not on record.

6. The deposition by the Plaintiffs is that the suit land herein belonged to their late grandmother and that they have since taken letters of administration in respect of her Estate. According to the Plaintiffs, upon receiving the Certificate of Confirmation, they transferred the suit land to Ruptex Co-operative Savings and Credit Sacco who are now the *bona fide* owners of the suit land. The said Ruptex Co-operative is however not a party to the suit.

7. The Plaintiffs have not informed the court why Ruptex Co-operative is not a Plaintiff in this matter if indeed it is the owner of the suit land. Having admitted that they sold the suit land to Ruptex vide a Sale Agreement dated 30th March, 2011, it follows that the Plaintiffs cannot successfully prosecute the suit without joining the current owner of the land. On that ground alone, I find that the suit and the Application are incompetent.

8. The Plaintiffs have not denied that the Defendant litigated with their father in Machakos Lands Disputes Tribunal Case No. 163 of 2001 over the suit land and that the said award was confirmed by the court in CMCC No. 8 of 2003 and in Judicial Review Application number 22 of 2006. Considering that there are decisions of the court confirming that the land is owned by the Defendant, and in view of the fact that the Defendant has been recognized by the Society as the owner of the suit land, I find and hold that the Plaintiffs have not established a prima facie case with chances of success. For those reasons, I dismiss the Application dated 27th October, 2016 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 20TH DAY OF APRIL, 2018.

O.A. ANGOTE

JUDGE