



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 86 OF 2000**

**SAMUEL MUINDI.....PLAINTIFF**

**VERSUS**

**MUTETI NTHULI.....DEFENDANT**

**JUDGMENT**

1. In the Plaintiff dated 4<sup>th</sup> May, 2000, the Plaintiff alleged that he is the allottee of plot number 5-030 measuring 150 by 140m at Muka Mukuu Farmers Co-operative Society; that on 24<sup>th</sup> April, 2000, the Defendant unlawfully removed the beacons bordering the suit land and plot number 5-029 and that the Defendant started cultivating the suit land.
2. The Plaintiff has sought for an order of permanent injunction restraining the Defendant from interfering with plot number 5-030 at Muka Mukuu Farmers Co-operative Society.
3. The Defendant filed a Defence in which he averred that this court does not have the jurisdiction to determine the dispute pursuant to the provisions of Section 76 of the Societies Act; that he is utilizing his father's plot which is plot number 5-029 and not the suit land and that the suit should be dismissed.
4. Although the Defendant was served with a hearing notice, he did not attend court when the matter came up for hearing on 23<sup>rd</sup> October, 2017.
5. The Plaintiff, PW1, informed the court that he is the owner of Plot Number 5-030 measuring 150m by 140m; that the Defendant invaded the said land in April, 2000, removed the beacons, cut down trees and started cultivating it and that he is still utilizing the suit land to date.
6. The Plaintiff produced in evidence the membership card from Muka Mukuu Farmers Co-operative Society for plot number 5-030. The Plaintiff sought for damages for the trees that the Defendant cut down.
7. In his submissions, the Plaintiff's advocate submitted that an order should issue for the Defendant to pay the Plaintiff for the damage caused by his actions; damages for trespass and an order directing the Machakos County Surveyor to visit the suit land and to clearly demarcate the boundary between the same and adjacent parcels of land.
8. The Plaintiff produced the membership card of Muka Mukuu Farmers Co-operative Society. The said card shows that the Plaintiff is the owner of plot number 5-030. The Defendant did not deny in the Defence that indeed the said plot is owned by the Plaintiff, but maintained that he is utilizing his father's plot, which is plot number 5-029.
9. In the circumstances, the order of permanent injunction restraining the Defendant from utilizing the suit land should issue. Considering that the Plaintiff did not pray for damages for trespass, I shall not grant the said prayer.
10. The Plaintiff did not also call an agricultural officer to testify on the damage that the Defendant occasioned on the land by cutting down trees. I shall therefore not award any damages in that regard.
11. Considering that there is a boundary dispute between plot number 5-030 and 5-029, the County Surveyor, in the company of the officials of Muka Mukuu Farmers Co-operative Society should visit the two parcels of land and demarcate the boundaries.
12. For those reasons, I allow the Plaintiff dated 4<sup>th</sup> May, 2000 as follows:

*a. A permanent injunction be and is hereby issued restraining the Defendant by himself, servants and or agents from entering or dealing in any way with plot number 5-030 at Muka Mukuu Farmers Co-operative Society.*

*b. The County Surveyor together with the officials of Muka Mukuu Farmers Co-operative Society to determine the boundaries of Plot No. 5-030 and other neighbouring plots within thirty (30) days from the date of this Judgment.*

*c. The Defendant to pay the costs of the suit.*

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 13<sup>TH</sup> DAY OF APRIL, 2018.**

**O.A. ANGOTE**

**JUDGE**