



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 433 OF 2017**

**VERONICAH MBITHE KWINGA *alias***

**MBITHE WAEMA.....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**MUEKE NGWILI *alias* MUEKE WAEMA..2<sup>ND</sup> PLAINTIFF/APPLICANT**

**VERSUS**

**HARON NDAMBUKI WAEMA.....DEFENDANT/RESPONDENT**

**RULING**

1. The Application before me is the one dated 30<sup>th</sup> October, 2017 in which the Plaintiffs are seeking for the following orders:

***a. That a temporary order of injunction be issued restraining the Defendant by himself, his agents, and/or employees and/or anyone claiming under him from entering into, constructing, disposing, cultivating, transferring, evicting and/or in any other manner interfering with the Plaintiff's land parcel No. Ekalakala/1233 pending hearing and determination of this Application.***

***b. Costs be provided for.***

2. The Application is premised on the grounds that the Applicants are the rightful owners of the suit land; that the Applicants inherited the suit land from their parents and that the Respondent intends to evict them from the suit land.

3. In the Affidavit, the Applicants have deponed that they are the step-sisters of the Respondent and that before their father died, he had sub-divided the suit land into two equal portions amongst his two wives. The Plaintiffs deponed that their late mother was allocated the suit land and that they have no other land to move to.

4. In response, the Respondent deponed that the Applicants have never been in occupation of the suit land; that the suit land is registered in his name and that the suit land has never been registered in favour of their late father.

5. The Respondent deponed that the Plaintiffs' brothers, Peter Mutinda Ndolo and Kimeu Ndoos trespassed on the suit land and that he filed in Yatta SRMCC Number 136 of 2011 a suit for their eviction and that the claim by the Plaintiffs' brothers that the suit land is their ancestral land was dismissed by the court. According to the Respondent, the current suit is *res judicata*.

6. The 1<sup>st</sup> Plaintiff submitted that the suit land belongs to their late father; that it is the Defendant who lives on the land and that he demolished her house. The 2<sup>nd</sup> Plaintiff submitted that the suit land was allocated to their mother and that the Defendant chased them from the land.

7. The Defendant's advocate submitted that the suit land is registered in the name of the Defendant; that the issues being raised in the current suit were raised in the lower court and that the court found that the suit land is not ancestral land.

8. The Plaintiffs are seeking for orders of injunction restraining the Defendant from entering on land known as Ekalakala 1233 which is registered in his name. According to the Plaintiffs, the suit land belonged to their late father and that their late father allocated it to their late mother.

9. The Defendant has annexed a copy of the Title Deed showing that the suit land was registered in his name on 22<sup>nd</sup> September, 2009. Although the Plaintiffs alleged that the said land was a sub-division of a larger parcel of land, and that the same was allocated to their mother by their late father, there is no evidence to show that the suit property was their ancestral land. Indeed, the Plaintiffs did not annex photographs to show that they are living on the said land or that they had houses on the land which were demolished by the Defendant.

10. The Plaintiffs have also not denied that Peter Mutinda Ndo and Kimeu Ndo, the Defendants in Kithimani PMCC No. 136 of 2011 were ordered to vacate the suit land by the court.

11. Considering that the issue of whether the suit land is ancestral land or not was litigated upon in Kithimani PMCC No. 136 of 2011 and the Plaintiffs' brothers were ordered to give vacant possession, I find that the suit herein is *res judicata*.

12. For those reasons, I find and hold that the Plaintiffs have not established a prima facie case with chances of success. I therefore dismiss with costs the Application dated 30<sup>th</sup> October, 2017.

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

**O.A. ANGOTE**

**JUDGE**