

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. NO. 40 OF 2011

ANNAH KAKUVI MWANIA.....PLAINTIFF

V E R S U S

ALFONCE MBITHI MALOMBE.....1ST DEFENDANT

SOLOMON KYALO MUTISO2ND DEFENDANT

KYALO ISIKA.....3RD DEFENDANT

RULING

1. In the Application dated 17th May, 2017, the Plaintiff is seeking for the following orders:

a. That a permanent order of injunction do issue against the 1st, 2nd and 3rd defendants restraining them either by themselves, agents, servants from selling, charging, transferring, entering into, remaining thereon, cultivating, sub dividing, clearing natural vegetation, fencing, grazing, putting up houses/structures evicting the Plaintiff or in any other way whatsoever interfering with the Plaintiffs quiet possession and occupation of Land Parcel Numbers MBIUNI/KABAA/62, MBIUNI/KABAA/61 and MBIUNI/KABAA/1 pending the hearing and determination of this suit.

b. That *status quo* be maintained pending the hearing and determination of this suit.

c. That the costs of this application be provided for.

2. The Application is premised on the grounds that the Plaintiff is the second wife of the 1st Defendant; that the suit property was acquired jointly by the Plaintiff and the 1st Defendant; that the suit properties are fenced as one block and that the Plaintiff and her family have been continuously living and using the suit premises.

3. According to the Plaintiff, the 1st Defendant secretly sold the suit land to the 2nd Defendant in the year 2010; that the 2nd and 3rd Defendants have entered the suit land and have started sub-dividing the same and that the 1st Defendant is holding the suit land in trust for the benefit of himself and the Plaintiff.

4. The Defendants did not file any response to the Application. The Application proceeded by way of written submissions which were filed by the Plaintiff's advocate. I have considered the said submissions and the authorities.

5. The Plaintiff is seeking for injunctive orders as against the Defendants. However, I have noted a similar Application was filed by the Plaintiff. The court declined to issue injunctive orders vide a Ruling dated 15th January, 2015. Although the Plaintiff was advised to fix this matter for hearing on a priority, she has never done so. Indeed, since 15th January, 2015 when the court delivered its Ruling, the Plaintiff has never fixed the matter for hearing.

6. In view of the Ruling of the court dated 15th January, 2015, I dismiss the application dated 17th May, 2017 for being *res judicata*.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 25TH DAY OF MAY, 2018.

O.A. ANGOTE

JUDGE