



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MACHAKOS
ELC. CASE NO. 405 OF 2017

DAVID N.MUTHUSI.....1ST PLAINTIFF

SABETH MUTHUSI.....2ND PLAINTIFF

VERSUS

ANNA N. MUTHUSI & 2 OTHERS.....DEFENDANT

RULING

1. The Application dated 26th September, 2017 by the Plaintiffs is seeking for the following orders;

a. That there be a temporary injunction restraining the 3rd respondent by himself, his agents, employees, servants or any other person(s) claiming and or acting through him from entering, alienating, cultivating, constructing, ploughing, tilling, planting, sowing and or interfering in any manner however and whatsoever with parcel of land No.Kangundo/Kyevaluki/799 situated at Kakuyuni Division, Kangundo Sub-County, Machakos County until the hearing and determination of this suit.

b. That the cost of this application be borne by the respondent.

2. The Application is supported by the 1st Plaintiff's Affidavit in which he has deponed that Thomas Muthusi Kioko died on 16th December, 2002; that he filed probate and succession cause No. 94 of 2017 and was granted the Grant of Letters of administration of the deceased's estate and that the suit land belongs to the deceased.

3. The 1st Plaintiff deponed that the 1st and 2nd Defendants sold a portion of land excised from a parcel of land known as Kangundo/Kyavaluki/799 to the 3rd Defendant and that when he attempted alternative dispute resolution, the Chief ruled the 3rd Defendant should take possession of the land.

4. The 1st Plaintiff finally deponed that the 1st and 2nd Defendants did not have capacity to sell the suit land which belonged to the Estate of the late Thomas and that they are intermeddlers in the said Estate.

5. In response, the 3rd Defendant deponed that at all material times, the 1st Defendant was the beneficial owner of the suit land; that he purchased the suit land for value from the 1st Defendant and that the land was registered in the name of Thomas Muthosi who was the 1st Defendant's husband.

6. It was the deposition of the 3rd Defendant that the late Thomas Muthusi had two wives; that upon his demise, the clan sub-divided the land belonging to the deceased into two portions and that each wife accepted the distribution done by the clan.

7. The 3rd Defendant finally deponed that the 1st Defendant was entitled to a portion of land measuring 0.35ha of the suit land; that the rest of the family members of the late Muthusi were selling their respective shares and that it was on that basis that he purchased the suit land from the 1st Defendant.

8. The Plaintiff's advocate submitted that the 1st and 2nd Defendants did not have capacity to sell the suit land to the 3rd Defendant; that the two do not have letters of administration and that the Application should be allowed.

9. The Defendant's advocate submitted that the two wives of the late Muthusi have been selling their respective shares of land; that the 3rd Defendant bought the suit land after ascertaining the beneficial owner of the same and that after the Chief heard the dispute, he ruled that the land belonged to the 3rd Defendant.

10. It is not in dispute that parcel of land known as Kangundo/Kyevaluki/799 was registered in favour of the late Thomas Muthusi Kioko on 29th December, 1989. According to the Death Certificate and the Limited Grant issued to the Plaintiffs, the late Muthusi died on 16th December, 2002.

11. It would appear that the court has not appointed Administrators of the Estate of the late Muthusi to administer his Estate. Although the 3rd Defendant has deponed that the clan of the late T.Muthusi has distributed his Estate amongst his two wives, the said distribution has not received the approval of the court.

12. Section 71(1) of the Law of Succession Act provides that the Capital assets of the deceased, including land, can only be distributed amongst the beneficiaries after the grant has been confirmed by the court. This position is repeated in section 82 (b) (ii) of the Act where the law provides that no immovable property of the deceased can be sold before confirmation of grant.

13. There is no evidence at all that a full grant has ever been issued in respect of the deceased's Estate. In the circumstances, no sale of the suit land could have validly occurred. The 3rd Defendant ought to pursue his proprietary's rights, if any, once and after the grant has been confirmed. For now, the law seems not to be on his side.

14. For those reasons, I find that any dealings in the suit land by the 3rd Defendant amounts to intermeddling in the Estate of the deceased. For those reasons, I allow the Application dated 26th September, 2017 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 21st DAY OF MAY, 2018.

O.A. ANGOTE

JUDGE