



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 190 OF 2017

MATHIAS OUKO ONDITI ODERA.....PLAINTIFF

VERSUS

HANNINGTON KYALO MUTIE.....DEFENDANT

RULING

1. What is before me is the Application by the Plaintiff dated 18th April, 2017 and filed on the same day. In the Application, the Plaintiff is seeking for the following orders:

a. That a temporary injunction do issue to restrain the Respondent/Defendant, his agents, servants, assigns and/or personal representatives, jointly and severally from alienating, taking possession, removing the Applicant/Plaintiff, claiming ownership, destroying and/or interfering with the Plaintiff's ownership and/or possession of all that parcel of land known as Mavoko/Block 14/67 pending the hearing and determination of this suit, Application, further directions and/or orders of this Honourable Court.

b. That the Respondent/Defendant be condemned to bear the costs of this Application.

2. The Application is premised on the grounds that by a letter dated 25th March, 2017, the Defendant purported to claim ownership of the suit land; that the Plaintiff purchased the suit land in 1995 and constructed a residential house on the land and that the Plaintiff is the registered proprietor of the said land.

3. According to the Plaintiff, he purchased a parcel of land known as Mavoko/Block 14/67 from Ngunjigu Building Company Limited by acquiring shares relating to parcel numbers 7340/44 and 7340/45; that a lease was issued in his favour on 4th August, 2016 and that he has since constructed a permanent house on the land.

4. In response, the Defendant deponed that he is the owner of the suit land having purchased it on 2nd June, 1992 from the initial owner, George Muhoshi; that after purchasing the said land, George accompanied him to the offices of Ngunjigu Building Company and that he was then issued with an allotment letter for the said land by Ngunjigu Building Company.

5. It is the Defendant's case that he paid to Ngunjigu Building the survey fees of Kshs. 1,500; that the initial plot number 67 which had been allocated to George was exchanged with plot number 67 (*the suit land*); that his name was then entered in the register and that the register was forwarded to the Commissioner of Lands to process titles of the members.

6. The Defendant deponed that Ngunjigu Building Company closed its offices in the year 2005; that the Chief retained the register of the members and that the Plaintiff trespassed on the land in February, 2016.

7. In the Supplementary Affidavit, the Plaintiff deponed that he has been in occupation of the suit land since 1995; that the Defendant's claim is time barred and that Urban Developers and Property Management Limited were the agents of Ngunjigu Building Company Limited.

8. The Plaintiff's advocate submitted that Section 25 of the Land Registration Act provides that the rights of a proprietor shall not be liable to be defeated except as provided in the Act and that because the Plaintiff has a title, he has not only established a prima facie case but also proved that he is likely to suffer irreparable loss that cannot be redressed by damages.

9. The Plaintiff's advocate submitted that on a balance of probabilities and convenience, the scale tilt in favour of the Plaintiff because the Plaintiff is in possession of the land.

10. The Defendant's advocate on the other hand submitted that the Certificate of Lease was issued to the Plaintiff in the year 2016, around the same time when the Plaintiff illegally entered the suit land; that the process of acquiring the title document can be challenged and that the Defendant has shown extensively how he acquired the suit land.

11. The Plaintiff's case is that he acquired the suit land from Ngunjigu Building Company in 1995. To support that allegation, the Plaintiff annexed on his Affidavit the receipts that were issued to him in 1994, being payment of the shares in the company. The Plaintiff was subsequently issued with a share certificate for parcel of land number Mavoko/Block 14/67.

12. The Plaintiff has exhibited the letter dated 18th December, 1995 in which the Commissioner of Lands informed him to pay Kshs, 1,600 for the preparation of the Lease. It would appear that the Plaintiff paid to the Commissioner of Lands the requisite fees because a Certificate of Lease was issued in his favour. The Certificate of Lease was issued on 25th August, 2016.

13. On the other hand, the Defendant's case is that he purchased the same property from a member of Ngunjigu Building Company in 1992. The Defendant exhibited a list of the members of Ngunjigu Building Company which shows that he is member number 67.

14. It is trite that under Section 25 of the Land Registration Act, a Certificate of Title can only be defeated on the ground of fraud or misrepresentation or where the Certificate of Title has been acquired illegally, unprocedurally or through a corrupt scheme.

15. However, before a Certificate of Title is impugned, it shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner of the land.

16. Consequently, until the Defendant proves at the hearing that the said Certificate of Title was unlawfully acquired, it remains prima facie evidence that the Plaintiff is the lawful owner of the land. Considering that it is the Plaintiff who is in possession of the suit land, the balance of convenience tilts in his favour.

17. For those reasons, I allow the Plaintiff's Application dated 18th April, 2017 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 11TH DAY OF MAY, 2018.

O.A. ANGOTE

JUDGE