



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 270 OF 2017**

**PAUL MUNYAO KIVILA.....PLAINTIFF**

**VERSUS**

**MULINGE KIVILA.....DEFENDANT**

**RULING**

1. In the Application dated 14<sup>th</sup> June, 2017, the Plaintiff is seeking for injunctive orders in the following terms:

***a. That a permanent order of injunction do issue restraining the Defendant/Respondent whether by himself, his servants, agents, employees, or any other person acting through him or under his instructions from entering upon, remaining thereon, trespassing, interfering with, harassing or threatening the Plaintiff's tenants or demanding, receiving or collecting rental income from the said tenants on Plaintiff's plot number 55 Mlolongo pending hearing and determination of the suit.***

***b. That the costs of this Application be provided for.***

2. The Application is based on the grounds that the Plaintiff is the registered proprietor of plot number 55 situate in Mlolongo town (*the suit land*); that the suit land is developed with a commercial cum residential rooms; that the Plaintiff was once married to the Defendant's mother and that the court in Machakos HCCC No. 45 of 2008 restrained the Defendant's mother from interfering with the Plaintiff's properties.

3. The Plaintiff has deponed that he divorced the Defendant's mother vide Kiambu Divorce Cause Number 48 of 1986; that the Defendant was born after the dissolution of the said marriage and that the Defendant is not his son.

4. It is the Plaintiff's deposition that despite the Defendant's mother being restrained by the court in HCCC No. 45 of 2008 from interfering with his properties, the Defendant has moved into the suit property and started demanding for rent from the tenants.

5. The Defendant filed Grounds of Opposition in which he averred that the Application does not disclose a prima facie case to warrant the orders being sought; that the Plaintiff has not exhibited a title document in respect of the suit land; that the questions raised in the Application can only be addressed in the Family Court and that this court lacks jurisdiction to entertain the claim.

6. In his submissions, the Plaintiff's advocate submitted that the suit property was purchased by the Plaintiff long after the Plaintiff had divorced the Defendant's mother; that the Defendant's mother was restrained by the court from interfering with the suit land and that the Defendant is being used by his mother to interfere with the suit land.

7. The Plaintiff's advocate finally submitted that the Defendant is ill suited to claim that the suit land is matrimonial property. The Defendant's advocate did not file submissions.

8. The evidence before me shows that the Plaintiff has been paying for water to the then Mavoko Municipal Council in respect to plot number 55. The Plaintiff has annexed the demand notices for water and sewerage services from Mavoko Municipal Council from 1999.

9. The Defendant has not denied that indeed the suit property has rental houses and that the Plaintiff was once married to his mother. The Defendant has also not denied that his mother litigated with the Plaintiff over the suit land and that his mother was restrained by the court from interfering with the suit land.

10. Considering that the issue of the suit land has been litigated upon and the Defendant's mother restrained from interfering with the suit land, and in the absence of any evidence by the Defendant to show his proprietary interest in the suit land, I find that the Plaintiff has established a prima facie case with chances of success. Having constructed residential houses on the suit land, the balance of convenience tilts in favour of the Plaintiff.

11. For those reasons, I allow the Application dated 14<sup>th</sup> June, 2017 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 4<sup>TH</sup> DAY OF MAY, 2018.**

**O.A. ANGOTE**

**JUDGE**