



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ELC NO. 3/2018

THERESIA KATUKU VULU.....PLAINTIFF

VERSUS

KAVATA MUENDO NDOLO.....1ST DEFENDANT

MUENI MUTUNDU.....2ND DEFENDANT

MUTUKU MUENDO.....3RD DEFENDANT

KANINI MUENDO.....4TH DEFENDANT

NDANU MUENDO.....5TH DEFENDANT

NDAMBUKI MUENO.....6TH DEFENDANT

RULING

1. On the 2nd March, 2018 the defendants filed a notice of preliminary objection dated the 28th February, 2018.
2. The defendant contends that the plaintiff's suit is bad in law, incurably defective and an abuse of the court since the plaintiff has no locus standi.
3. On the 15th May, 2018 the defendant filed an affidavit sworn at Machakos on an unnamed date in support of the preliminary objection. In paragraph 3 of their affidavit, the defendants contend that the land parcel number Makueni/Kimundi/3986 is registered in the name of one Thoma Kiiio Mailu as per the certificate of official search annexed to the affidavit as annexure KMN-1. As such according to the defendants, the plaintiff has no locus standi to institute this suit.
4. On the 14th June, 2018, the plaintiff filed her replying affidavit to the preliminary objection the same being sworn at Nairobi on the 23rd May, 2018. In paragraph 1 of her affidavit, the plaintiff has deposed that she is the registered owner of the suit land herein and proceeded to annex title deed number Makueni/Kimundi/3986 and certificate of official search as annexure TKVI. The two documents bear her name.
5. On the 5th April, 2018 the court directed that the preliminary objection be disposed off by way of written submissions. By the time of writing this ruling, only the defendants had filed their submissions. The defendant rely on section 24(a) of the Land Registration Act which provides that;

“ That subject to this Act, the registration of a person as a proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto”

6. They also rely on the case of ***Kibera Blessed Academy Vs World Missionary Evangelism of Kenya Registered Trustees and 4 others [2016] eKLR.***
7. In the case of ***Mukisa Biscuit Manufacturing Co. Ltd Vs West End Distributors Ltd[1969] EA 696*** Sir Charles Newbold P observed as follows:-

“ A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the

assumption that all facts pleaded by the other side are correct. It cannot be raised if any of the fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points law by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion confuse issues. This improper practice should stop”

8. In the preliminary objection before me, the issue of registration of ownership that the defendants raise is a question of fact. There is contestation as to whether or not the suit land i.e Makueni/Kimundi/3986 is registered in the name of the plaintiff herein. That contestation can only be resolved by way of evidence. As such, I hold that the defendants have improperly raised a point of law by way of preliminary objection and the same has no merits. In the circumstances, I hereby proceed to dismiss the preliminary objection with costs to the plaintiff.

Signed, dated and delivered at Makueni this 18TH day of July, 2018.

MBOGO C.G,

JUDGE

In the presence:

Mr. Mutune for the defendant

Munyasia & Co. for the plaintiffs

Mr. Kwemboi Court Assistant

MBOGO C.G, JUDGE

18/7/2018