



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO.72 OF 2017

TITUS NGENYE MUTHAMA1ST PLAINTIFF

ANNE NDUNGE NGENYE.....2ND PLAINTIFF

VERSUS

ANGELINA NZIOKA.....DEFENDANT

RULING

1. The undated Application by the Defendant filed on 7th November, 2017 is seeking for the following orders:

a. That the Plaintiffs/Respondents be restrained by way of temporary injunction either by themselves, their agents, servants or any other person claiming under them from occupying, accessing, constructing or depositing any construction materials on the land known as Machakos Town Block 3/288 until determination of this suit.

b. That the Plaintiffs/Respondents be ordered to remove any materials, items deposited on the land known as Machakos Town Block 3/288 pending the determination of this suit.

2. The Application is based on the grounds that the Defendant is the absolute registered proprietors of land known as Machakos Town Block 3/288 (*the suit property*); that the Plaintiffs instituted this suit claiming to be the owners of the land and that the Plaintiffs have gone ahead to deposit building materials on the suit land.

3. It is the Defendant's case that the Plaintiffs should be restrained from committing further acts of purporting to own the suit property pending the hearing of the suit.

4. In response, the 1st Plaintiff deponed that they bought parcel of land known as plot number 1887 at Katelembo Athiani Muputi Farming and Ranching Society Limited (*the Society*); that the said land was transferred to them and that the Defendant's Title Deed must be in respect to a different piece of land.

5. The Defendant's/Applicant's advocate submitted that the Applicant is the registered proprietor of the suit land; that the Plaintiffs have deposited building materials on the land and that an injunctive order should issue.

6. The Plaintiffs' counsel submitted that the Defendant does not have a counter-claim to the Plaintiffs' claim; that the prayer for injunction is not anchored on anything else and that the Application should be dismissed on that ground alone.

7. The Plaintiffs' counsel finally submitted that there is no nexus between plot number 1877 and Machakos Town Block 3/288 and that the Defendant has not demonstrated a prima facie case with chances of success.

8. In their Complaint, the Plaintiffs alleged that they are the lawful owners of plot number 1887 measuring approximately 2½ acres which they bought from Johnson Kimeu and that the Defendant has been trying to access the said land.

9. In the Defence, the Defendant averred that she is the registered proprietor of land known as Machakos Town Block 3/288 (*formerly Plot No. 1887 RM 288*) having purchased it from one Joseph Nzioki Nbuvi. The Defendant/Applicant has annexed on her Affidavit a copy of the Title Deed for the said land.

10. Indeed, there is no evidence before me to show the nexus between parcel numbers Machakos Town Block 3/288 and plot number 1887. Except for a copy of the letter dated 4th August, 1998, the Defendant has not attempted to file a report by a surveyor to show that the two parcels of land are one and the same.

11. Although the Plaintiffs have claimed that their land is distinct from the Defendant's land, they have also not provided any document to show that the two parcels of land are different, or that the Title Deed exhibited on the Defendant's Affidavit is an outright forgery.

12. The circumstances of this case dictates that the prevailing *status quo* should be maintained so that the suit land is preserved pending the hearing and determination of the suit. For those reasons, the court makes the following specific orders:

a. The prevailing status quo to be maintained, meaning that neither the Plaintiffs nor the Defendant should develop, alienate, sell or charge the suit property pending the hearing and determination of the suit.

b. Each party to bear his/her own costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 28TH DAY OF SEPTEMBER, 2018.

O.A. ANGOTE

JUDGE