



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 319 OF 2017

ANNAH MUMBUA MAINGI (*Suing as the legal representative of the
Estate of ITUMO MAINGI (deceased)*).....**PLAINTIFF**

VERSUS

ELIUD NGUMBAU MBOKO.....**DEFENDANT**

RULING

1. The Application dated 20th July, 2017 and filed by the Plaintiff is seeking for the following orders:

a. That this Honourable Court be pleased to grant an order restraining the Defendant/Respondent by himself, his servants, agents and anyone claiming under him or through him from interfering with any building materials on the land parcel No. Iveti/Misakwani/719 belonging to the Plaintiff/ Applicant herein.

b. That this Honourable Court be pleased to issue an order restraining the Defendant/Respondent from interfering with the Plaintiff's use of and possession of suit land pending hearing and determination of this Application.

c. That the Defendant/Respondent bear the costs of the Application herein.

2. The Application is premised on the grounds that the Plaintiff is the beneficiary of the Estate of the deceased; that the deceased was given parcel of land known as Iveti/Misakwani/713 by his late father who then sold it to Sammy Musila on 10th June, 1976; that the local administration ordered that the said Sammy Musila do refund the purchase price which he was paid in 1981 and that the Applicant has been using the suit land without any interference since then.

3. The Plaintiff has deponed that the Defendant is his grandson who was appointed a sub-chief; that the Defendant has been using his authority to interfere with the suit land and that the letter dated 5th January, 2017 purportedly authored by him is a forgery and that there are ongoing succession proceedings in respect of the suit land.

4. In response, the Defendant deponed that he is the legal owner of the suit land having acquired it from the late Katumo Maingi; that he purchased the suit land vide an agreement dated 7th March, 2013 and that the seller granted him vacant possession of the suit land.

5. According to the Defendant, Maingi Nzuki Soi trespassed on the suit land on 19th September, 2016 and that when he was arrested, the Plaintiff pleaded with the police to have him released; that in order to settle the claim, the Plaintiff signed the agreement of 5th January, 2017 and that he holds a valid Title Deed to the land.

6. In the Further Affidavit, the Plaintiff deponed that the conveyancing documents that the Defendant is relying on were forged; that the title to the land was fraudulently issued and that the issue of ownership of the land will be determined vide Succession Cause No. 9 of 2015.

7. Both parties filed written submissions together with a list of authorities which I have considered.

8. According to the Plaintiff's deposition, the deceased, Itumo (*Katumo*) Maingi is the owner of the suit property which he unsuccessfully attempted to sell to one Sammy Musila on 10th June, 1976. The Agreement between the late Katumo Maingi and Sammy Musila has been annexed on the Supporting Affidavit of the Plaintiff.

9. It is the Plaintiff's case that she has been living on the suit land and that she should be allowed to continue living on the land. On the other hand, the Defendant has claimed that he purchased the suit land from the late Katumo Maingi for Kshs. 250,000. The Defendant produced in evidence the Sale Agreement, the Application for the consent of the Land Control Board and the Title Deed that was issued to him on 11th

December, 2015.

10. Although the Plaintiff has deponed that both the Sale Agreement and the title are forgeries, she did not produce any evidence to that effect.

11. If indeed the Plaintiff has filed succession proceedings in respect to the suit land, then she should have filed the current Application in that suit instead of filing the present suit. However, as I have stated above, until it is proved or shown that the Defendant's Title Deed was acquired fraudulently, or by misrepresentation, or that it was acquired illegally, unprocedurally or through a corrupt scheme (*See Section 26 of the Land Registration Act*) he is entitled to the land. I therefore find and hold that the Plaintiff has not established a prima facie case with chances of success.

12. Consequently, I dismiss the Application dated 20th July, 2017 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 21ST DAY OF SEPTEMBER, 2018.

O.A. ANGOTE

JUDGE