



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO.311 OF 2017**

**KIMSON HOLDINGS LIMITED .....PLAINTIFF**

**VERSUS**

**GEOFFREY MUSYOKA MUSEMBI .....DEFENDANT**

**AND**

**GABRIEL NJOGU & 91 OTHERS .....INTERESTED PARTIES**

**RULING**

1. In the Application dated 13<sup>th</sup> July, 2017, the Interested Parties (*Applicants*) are seeking for the following orders:

- a. That the Applicants herein request to be enjoined in this matter.*
- b. That the orders dated 22<sup>nd</sup> July, 2016 be herein vacated and/or set aside.*
- c. That the costs of this Application be provided for.*

2. The Application is grounded on the following grounds: that the Applicants are the *bona fide*, legal and rightful owners of parcel of land known as Mavoko Town Block 3/1968; that a new title for parcel of land known as Mavoko Town Block 3/36365 was issued to the Plaintiff on the basis of a court order in HCCC No. 55 of 2016 and that the Applicants were not aware of the said suit.

3. According to the Affidavit of the 1<sup>st</sup> Interested Party, the Interested Parties bought the sub-divisions of the larger parcel of land from Mbukoni Holdings Limited; that they have taken possession and settled on the portion of land that they purchased and that they filed a suit in Machakos ELC No. 92 of 2013 which has a pending Ruling.

4. It is the Interested Parties case that when their advocates conducted an official search, it revealed that parcel of land known as Mavoko Town Block 3/1968 had been sub-divided resulting into parcels of land number 36364 and 36365 and that the said sub-division were done on 7<sup>th</sup> April, 2014 despite the existence of Machakos ELC No. 92 of 2013.

5. The Applicants finally deponed that the Defendant failed to disclose that there was a dispute in respect of the same land and that the orders issued herein will cause great pain and misery to the Interested Parties.

6. In response, the Plaintiff's representatives deponed that the Applicants have no *locus standi* to bring any suit against the Plaintiff; that the court became *fuctus officio* after issuing final orders; that the Defendant herein admitted the Plaintiff's claim and that the subject matter herein is in respect to parcel of land known as Mavoko Town Block 3/36365 and that plot number 1968 was sub-divided and parcels of land known as Mavoko Town Block 3/36364 and 36365 were created.

7. The Interested Parties, the Defendant and the Plaintiff's advocate filed submissions which I have considered.

8. The record shows that the Plaintiff filed this claim as against the Defendant in which it sought for an order granting it the exclusive peaceful and quiet enjoyment of parcel of land known as Mavoko Town Block 3/36365.

9. According to the Plaintiff's Complaint, it bought a portion of a parcel of land known as Mavoko Town Block 3/1968 measuring 10 acres from the Defendant; that the suit property was then sub-divided into two and that parcel of land known as Mavoko Town Block 3/36365 was then transferred to the Plaintiff.

10. The Plaintiff and the Defendant entered into a consent dated 29<sup>th</sup> June, 2016 in which the suit was allowed. The said consent was adopted by the court on 31<sup>st</sup> January, 2017. By the time the parties herein were entering into the consent of 29<sup>th</sup> June, 2016, the Interested Parties/Applicants' had filed Machakos ELC. No. 92 of 2013 in which they sued several Defendants, in respect of land known as Mavoko Town Block 3/1968. The Defendants in ELC. No. 92 of 2013 are the same people who purportedly sold the same land to the Defendant in this matter (*ELC. No. 55 of 2016*).

11. It is therefore obvious that the Applicants herein are claiming the same land in ELC. No. 92 of 2013 which the Plaintiff successfully claimed as against the Defendant. However, this suit was compromised by the Plaintiff and the Defendant.

12. Considering that the settlement of this suit between the Plaintiff and the Defendant does not affect the Applicants' claim in ELC. No. 92 of 2013, and this suit having been settled as between the Plaintiff and the Defendant, the Applicants should enjoin the parties herein in ELC. No. 92 of 2013 which is still pending. The Applicants cannot join in this suit which has since been settled, but instead prosecute the pending suit.

13. Consequently, I find that the Application dated 13<sup>th</sup> July, 2017 is unmeritorious and I dismiss it with no order as to costs. This file shall be marked as closed as indicated in the order of the court of 31<sup>st</sup> July, 2017.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2018.**

**O.A. ANGOTE**

**JUDGE**