



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 450 OF 2017**

**MUTHINI MULWA.....PLAINTIFF**

**VERSUS**

**PAULINA KATHINI MULWA.....DEFENDANT**

**RULING**

1. In the Chamber Summons dated 10<sup>th</sup> November, 2017, the Plaintiff is seeking for the following reliefs:

***a. That an inhibition be made inhibiting the registration of any dealings with land parcel number Yatta B2/Kwa Vonza/1020 until the determination of the suit herein.***

***b. That costs of this Application be awarded to the Applicant.***

2. The Application is premised on the Plaintiff's Affidavit who has deponed that she is the second wife of the late Paul Mulwa Ndana while the Defendant was his second wife; that the late Paul Mulwa settled the Defendant in Kalia Sub-location; that she settled in Kwa Vonza location and that during adjudication, the area she had established her homestead was registered as Yatta B2/Kwa Vonza/265 while the earlier area that she had also occupied became parcel number 1020.

3. It is the Plaintiff's case that although parcel number 1020 was registered in favour of their late husband, she is the one who has always used portion number 1020 since 1968; that she agreed to let the Defendant during the Succession Cause take a portion of parcel number 1020; that the Defendant was to transfer 11 acres to her and that the Defendant has since refused to transfer the 11 acres to her. The Plaintiff finally deponed that the Defendant intends to sub-divide the suit land into three (3) portions and alienate the same.

4. In response, the Defendant deponed that there was no Agreement whatsoever between herself and the Plaintiff over the suit land as alleged; that the land was given to her through Kitui Succession Cause No. 41 of 2009 and that although the Plaintiff was given four (4) parcel of land in the Succession Cause, she was given only one parcel of land.

5. The Defendant finally deponed that she is the registered proprietor of the suit land and that she has the right to sub-divide the said land and deal with it as she sees fit.

6. In his submissions, the Plaintiff's advocate submitted that the order being sought is meant to preserve the suit land; that the Plaintiff has an equitable interest in the suit land and that the Plaintiff's claim over the suit land is for 11 acres.

7. The Plaintiff's counsel finally submitted that the Defendant has not demonstrated the prejudice she will suffer if the orders that are being sought are granted and that the Plaintiff has established a prima facie case with chances of success.

8. The Defendant's advocate submitted that the copy of the confirmed grant shows how the Estate of their deceased husband was distributed and that the Plaintiff's case is neither genuine nor arguable and ought to be dismissed.

9. The Defendant's counsel finally submitted that the Plaintiff will not suffer any irreparable damage because she has a total of eighteen (18) parcels of land whereas the Defendant has only two (2) parcels of land and that in fact, the Estate of the deceased was unequally distributed in favour of the Plaintiff.

10. It is not in dispute that the Defendant was registered as the proprietor of the suit land on 7<sup>th</sup> April, 2011. It is also not in dispute that the registration of the suit land in favour of the Defendant was pursuant to the Certificate of Confirmation of a Grant that was issued by the

Senior Resident Magistrate in Kitui Succession Cause No. 41 of 2009 dated 6<sup>th</sup> October, 2010.

11. The Certificate of Confirmation of Grant in Kitui PM Succession Cause No. 41 of 2009 shows how the Estate of the Plaintiff's and the Defendant's late husband was distributed amongst the two (2) widows. The Plaintiff did not object to the allocation of the entire parcel of land known as Yatta B2/Kwa Vonza/1020 to the Defendant.

12. Although the Plaintiff has deponed that she had agreed with the Defendant that the Defendant will transfer 11 acres of the suit land to her, there is no evidence of such an Agreement. Indeed, if such an Agreement existed, then it should have been addressed by the Succession Court, or better still, it should have been in writing.

13. The Succession proceedings having been finalized without any objection in 2010, and the Title Deed having been issued to the Defendant in the year 2011, I find the contention by the Plaintiff to be an Appeal through the backdoor of the decision of the Succession Cause.

14. It is trite that this court does not have the jurisdiction to undo the decision of the Succession Court, and more so in a situation where the orders being sought are not supported by any evidence. In the circumstances, I find and hold that the Plaintiff has not established a prima facie case with chances of success.

15. Indeed, considering that the Plaintiff was also allocated parcels of land in the Estate of the deceased, no irreparable damage that cannot be compensated by way of damages will be occasioned if the orders being sought are not granted. Suffice it to say that no basis has been laid as to why the Defendant should be inhibited from utilizing the land that is registered in her favour by way of transmission.

16. For those reasons, I dismiss the Application dated 10<sup>th</sup> November, 2017 with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 26<sup>TH</sup> DAY OF OCTOBER, 2018.**

**O.A. ANGOTE**

**JUDGE**