



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 448 OF 2017

BENSON NZIOKA MWANZIA.....PLAINTIFF

VERSUS

MUTISO WAMBUA KAUMBA.....DEFENDANT

RULING

1. In the Application dated 6th November, 2017, the Plaintiff is seeking for the following orders:

a. That pending the hearing and determination of this Application, this Honourable Court be pleased to grant a temporary injunction restraining the Defendant/Respondent either by himself, servant, agents, and/or employees or any other person working under his instructions from evicting, entering or remaining into, alienating, wasting, transferring and/or interfering with the Plaintiff's/Applicant's possession and/or other ownership rights or in any other manner dealing with all that parcel of land known as Mbiuni/Ulaani/645 situated within Machakos County.

b. That the O.C.S Tala Police Station do enforce the said order.

c. That cost of this Application be in the cause.

2. The Application is supported by the Affidavit of the Plaintiff who has deposed that parcel of land known as Mbiuni/Ulaani/654 was bought by his deceased father, one Rev. Samuel Mwanzia on 6th December, 1975; that he has lived on the suit land with his family for more than forty (40) years and that he obtained a Title Deed in respect to the suit land on 19th June, 2013.

3. It was the deposition of the Plaintiff that in January, 2007, he noticed someone had demolished his fence and cut down the trees which were on the land and that the Defendant has since blocked him from entering the suit land.

4. The Defendant filed Grounds of Opposition in which he averred that the Application is an abuse of the court process and that the Application is baseless, fatally defective and does not meet the legal threshold required for the grant of such Applications. The Defendant did not file a Replying Affidavit.

5. In his submissions, the Plaintiff's advocate submitted that the Plaintiff has demonstrated the ownership of the suit land by producing A Title Deed; that under Section 26 of the Land Registration Act, the Certificate of Title is prima facie evidence of ownership of land and that the Application should be allowed.

6. On his part, the Defendant's advocate submitted that the Plaintiff had failed to show that he has a prima facie case with chances of success.

7. The evidence before me shows that the Plaintiff's father purchased the suit land on 6th December, 1975 from one Paul Mutune. The suit property then devolved to the Plaintiff upon the death of his father. The Plaintiff was issued with the Title Deed for the suit land on 19th June, 2013 after the Confirmation of a Grant in Machakos Succession Cause No. 164 of 1994.

8. It is trite that under Section 26 of the Land Registration Act, a Certificate of Title is prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner. Such a title can only be defeated on the ground of fraud or misrepresentation.

9. The Defendant did not rebutt the Plaintiff's assertion that he is holding a valid title. Indeed, there is no evidence before me to show that the Plaintiff procured the Title Deed in respect to the suit land by fraud or misrepresentation. In the circumstances, I find and hold that the Plaintiff has established a prima facie case with chances of success. I therefore allow the Application dated 6th November, 2017 as follows:

a. Pending the hearing of the suit, the Defendant or his servants, agents and/or employees or any other person working under his instructions is restrained from evicting, entering, remaining into, alienating, wasting or interfering with the Plaintiff's possession and or ownership of rights over a parcel of land known as Mbiuni/Ulaani/645.

b. The O.C.S Tala Police Station to enforce this order.

c. The Defendant to pay the costs of the Application.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 19TH DAY OF OCTOBER, 2018.

O.A. ANGOTE

JUDGE