



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 374 OF 2017**

**CYBELE LIMITED.....PLAINTIFF**

**VERSUS**

**PATRICK NJAU.....DEFENDANT**

**RULING**

1. In the Application dated 12<sup>th</sup> September, 2017, the Plaintiff is seeking for the following orders:

*a. The court be pleased to grant an injunction restraining the Defendant/Respondent whether by himself, their agents and/or servants from trespassing on, wasting, constructing on, alienating or otherwise interfering or dealing with the Plaintiff's property being Land Reference Number 26699/22 pending the hearing and determination of this suit.*

*b. The Officer Commanding Mlolongo Police Station do enforce compliance of the orders above.*

*c. The costs of this Application be provided for.*

*d. The Honourable Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.*

2. The Application is premised on the grounds that the Plaintiff is the legal owner of Land Reference Number 26699/22 (*the suit land*); that the Defendant has interfered with the suit land by trespassing on the land and damaging the perimeter fence and putting up permanent football goalposts and that the Defendant should be restrained from trespassing on the suit land.

3. In response, the Defendant deponed that the suit land is public utility land; that the football posts were erected on the suit land by Sabaki Residents Association for the Sabaki Football team and that the Plaintiff cannot claim land that was initially owned by the Numerical Machining Complex which was sub-divided on condition that the suit land is surrendered as a public utility plot.

4. The Defendant finally deponed that the National Land Commission recommended for the cancellation and reclamation of the suit land in its Report and that the Application should be dismissed.

5. In his submissions, the Plaintiff's advocate submitted that the Plaintiff became the absolute and indefeasible owner of the suit land when it was issued with the grant by the Commissioner of Lands; that the Defendant has not produced any evidence to show that the suit land was surrendered for public purposes and that a finding of unlawful acquisition of land referred to under Article 40(6) of the Constitution must be through a legally established process.

6. The Plaintiff's counsel submitted that the recommendations of the alleged Task Force were issued without affording the Applicant the right to be heard; that it is imperative that individuals who are affected by administrative decisions be given an opportunity to present their case and that no notice whatsoever was ever given to the Plaintiff before the Task Force recommendations were made.

7. The Defendant's advocate submitted that the Plaintiff's title is questionable; that the Plaintiff has never developed the suit land and that the suit land was set aside for a State Corporation which surrendered the land to the Government for public utility purposes.

8. The prayer of an injunctive order that the Plaintiff is seeking is premised on the Grant that it was issued on 23<sup>rd</sup> January, 2011 by the then Commissioner of Lands and registered on 2<sup>nd</sup> March, 2011. According to the Plaintiff, the provisions of Article 40(1) of the Constitution and Section 26 of the Land Registration Act protects the holder of a title document and as such, the Defendant should be enjoined from claiming that the suit land is meant for public purpose.

9. Other than the grant that was annexed on the Plaintiff's Supporting Affidavit, the Plaintiff did not exhibit any other document that supports the process that the processing of the grant went through.

10. The Defendant has alleged that the suit land formed what used to be land belonging to Numerical Machining Complex which was subdivided and the suit land (L.R. No. 26699/22) surrendered as a public utility. According to the Defendant, L.R. No. 26699/22 was meant for a Secondary School and was therefore not available for allocation.

11. The Defendant exhibited on his Affidavit the letter dated 4<sup>th</sup> February, 2008 by the General Manager of Numerical Machining Complex to the Commissioner of Lands. The said letter shows that L.R. No. 11895/20 belonged to Numerical Machining Complex and upon subdivision, L.R. No. 26699/22 was surrendered for a Secondary School purpose.

12. I have perused the Deed Plan that is annexed on the Plaintiff's Grant. The Deed Plan shows the words "*Secondary School*" meaning that the land was meant for a Secondary School. The Plaintiff has not indicated in its Affidavit the person who inserted the words "*Secondary School*" on the Deed Plan No. 2455657 dated 9<sup>th</sup> December, 2002. Indeed, Deed Plan No. 2455657 that supports the Plaintiff's title is the same plan that was surrendered by the Numerical Machining Complex in its letter dated 4<sup>th</sup> February, 2008 for a Secondary School. Consequently, the said land could not have been available for allocation to the Plaintiff unless there was a change of user.

13. It is trite that a title document is an end product of a process. The mere fact that a party has a title is not enough, especially where it is alleged that the title was obtained fraudulently. The Plaintiff should have gone further to produce the letter of allotment and the approved physical development plan that gave rise to the Deed Plan that is annexed on the grant. He never did that, but instead, relied on a Deed plan which on the face of it was reserved for a Secondary School.

14. Considering that the Plaintiff has not developed the suit property and in view of my preliminary findings that there is no evidence to show that the Plaintiff was lawfully allocated the suit land, I find that the interests of the public to utilize the suit land pending the hearing of the suit outweighs the Plaintiff's private interests.

15. Other than the Plaintiff not having shown that he has a prima facie case with chances of success, I am also of the view that the balance of convenience tilts in favour of the public.

16. For those reasons, I dismiss the Plaintiff's Application dated 12<sup>th</sup> September, 2017 with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 19<sup>TH</sup> DAY OF OCTOBER, 2018.**

**O.A. ANGOTE**

**JUDGE**