



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 227 OF 2017

KELVIN NZIOKI & 53 OTHERS.....PLAINTIFFS

VERSUS

EXPORT PROCESSING ZONE

AUTHORITY, ATHI RIVER.....1ST DEFENDANT

KENYA MEAT COMMISSION.....2ND DEFENDANT

RULING

1. What is before me is the Notice of Motion dated 9th February, 2017 in which the Plaintiffs are seeking for the following orders:

a. That this Honourable Court be pleased to issue an order of temporary injunction restraining the Defendants/Respondents whether by themselves, agents, employees, servants and or anybody acting on their behalf or on their instructions from evicting, demolishing houses, selling, charging, transferring or in any manner interfering with the Applicants access to, occupation of and/or quiet enjoyment of the plots within the Settlement Scheme known as KMC Phase III as more particularized in the schedule attached herewith and marked "A" pending the hearing and determination of this suit.

b. That the OCS and OCPD Athi River Police Station do supervise and ensure that these orders are complied with.

c. That this Honourable Court be pleased to issue such further orders as it shall deem fit and just in the circumstances.

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

2. The Application is supported by the Affidavit of the 1st Plaintiff who has deponed that the Plaintiffs, together with their families, have been living on a piece of land known as KMC Phase III situate in Mavoko within the Machakos County Government (*the suit land*) since the year 1997; that they have constructed houses on the said land, including building of primary and secondary schools and that they applied to the then Municipal Council of Mavoko to be allocated the said land in the year 2005.

3. According to the Plaintiffs, the Town Planning, Housing and Marketing Committee approved their Applications on 7th May, 2005; that they were issued with the letters of allotment on 6th August, 2007 and that they have been paying the requisite rates to the council.

4. The 1st Plaintiff deponed that it was on the basis of their earlier occupations and the subsequent allocation of the suit land by the council that they have occupied and developed the suit land; that in the year 2016, guards from a private security firm were deployed on the suit land on the 1st Defendant's instructions and that the Defendants' activity of fencing the land is meant to deprive them the suit land.

5. In response, the 1st Defendant's Managing Director deponed that the Plaintiffs have not identified the specific properties over which they are seeking for injunctive orders; that there is no Settlement Scheme in Mavoko known as KMC Phase III and that the Plaintiffs do not hold any title document in respect to the suit land.

6. The 1st Defendant's Managing Director deponed that the geographical location of the purported temporary plots that were allocated to the Plaintiffs had not been demonstrated; that the 1st Defendant is the registered proprietor of land known as L.R. No. 18474 measuring 454.4Ha and that the 1st Defendant has always been in occupation of the suit land.

7. The 1st Defendant also filed a Notice of Preliminary Objection dated 23rd February, 2017 in which it averred that the suit is incompetent because no written authority by the 2nd to the 54th Plaintiffs has been filed by the Plaintiffs.

8. On his part, the 2nd Defendant's Managing Commissioner deponed that the Plaintiffs' Application and suit are premised on the sub-division of L.R. No. 10281; that L. R. No. 10281 belongs to the 2nd Defendant by virtue of Grant number I.R. 20302 measuring 164 acres and that the said land has never been sub-divided by the 2nd Defendant or at all.
9. It is the 2nd Defendant's case that it charged the suit property to the National Bank of Kenya; that the 2nd Defendant has erected some structures on the land, including a Social hall and that the alleged Minutes of the Mavoko Municipal Council are replete with in explicable and culpable inconsistencies.
10. The 2nd Defendant's Commissioner finally deponed that the alleged letters of allotment are forgeries; that the said letters of allotment precede the sub-division plan of 5th December, 2012 and that the failure to enjoin the Municipal Council of Mavoko's successor, the County Government of Machakos, is fatal to the Plaintiffs' claim. The 2nd Defendant's Commissioner deponed that the Plaintiffs should be ordered to vacate the suit land under the supervision of the OCPD and the DCIO, Athi River Police Station.
11. In his Further Affidavit, the 1st Plaintiff deponed that the then Town Council of Masaku commissioned a report on the sub-division of land measuring 51.4 acres of L.R. No. 18474 registered in the name of the 1st Defendant and 30 acres of L.R No. 10281 registered in the name of the 2nd Defendant. According to the Plaintiffs, although the Defendants hold the titles to the suit land, they have been in continuous, peaceful and uninterrupted occupation of the land.
12. The Plaintiffs' advocate submitted that after the Plaintiffs were allocated the suit land, they continued paying rates for the suit land; that the Plaintiffs have developed the suit land and that the government has also put up schools on the suit land.
13. The Plaintiffs' advocate finally submitted that there is nothing to show that the documents the Plaintiffs are holding are forgeries and that the eviction of the Plaintiffs from the suit land will be prejudicial to them.
14. The 1st Defendant's advocate submitted that the 1st Defendant is a holder of a valid title document; that there are no people occupying its land and that the Plaintiffs have not demonstrated that they have houses on the suit land. According to counsel, the Minutes annexed on the Plaintiffs' Affidavit are forged and that the schools on the suit land are government entities. The 1st Defendant's advocate submitted that the suit land has not been identified by the Plaintiffs and that the 1st Defendant should be allowed to fence off the land.
15. The 2nd Defendant's advocate submitted that only four (4) Plaintiffs have an interest in the suit land; that the 2nd Defendant holds two distinct titles to the suit land; that one of the grant was issued to the 2nd Defendant in 1964 and that because it is the 2nd Defendant who is registered as the proprietor of the land, the Plaintiffs have not established a prima facie case with chances of success.
16. The 2nd Defendant's advocate submitted that a temporary letter of allotment is not known in law and that there is no evidence to show that the Plaintiffs have ever paid the requisite rates and rent for the land.
17. The Plaintiffs' claim is in respect to a parcel of land known as KMC Phase III which has been particularized in a schedule attached to the 1st Plaintiff's Supporting Affidavit. According to the said schedule, each of the 54 Plaintiffs has a specific plot number allocated to him/her. The 1st Plaintiff deponed that they were allocated the said plots, which are within the County Government of Machakos, in the year 2005 and that they have since developed their respective plots. The Plaintiffs annexed on the Supporting Affidavit photographs of numerous permanent buildings purportedly put up by them. In addition to the said buildings, it is the Plaintiffs' case that the government has constructed on the suit land a primary and secondary school.
18. The Plaintiffs exhibited on their Affidavit the Minutes of Town Planning, Housing and Markets Committee of a purported meeting of 17th May, 2005. In the said Minutes it is indicated that the Council resolved to issue to the "*rightful owners of plots which had been allocated*" with temporary letters of allotment for Kanaani, Numerical Machining and KMC. The said "*Letter of Temporary allocation*" signed by the Town Clerk were also exhibited by the Plaintiffs.
19. In addition to the said "*temporary letters of allocation*" for the unsurveyed plots, the Plaintiffs also exhibited on the Supporting Affidavit the demand for Rent issued by the Mavoko Sub-County for several plots.
20. Although the 1st Defendant has annexed two grants for L.R. No. 294134 measuring 29.11Ha (72.77 acres) and L.R. No. 18474 measuring 454.4Ha (1,135 acres), there is no evidence before me to show that the two parcels of land are different from the plots that the Plaintiffs are claiming that they were allocated, procedurally or unprocedurally.
21. Indeed, the 1st Defendant has admitted that it is aware of four (4) claimants who are in actual possession of four (4) plots. The 1st Defendant has further admitted that there exists a primary and secondary school on the suit property, which, for all intents and purposes, is used by the general public.
22. The Plaintiffs annexed on their Affidavit two sub-division schemes showing the numerous plots that have been purportedly occupied by themselves, either physically or otherwise. According to the two sub-division schemes, L.R. No. 10281 was sub-divided into 280 portions of land measuring 40 x 80 feet, leaving 14.2 acres of land for public utilities. On the other hand, L.R. No. 18474/217 was sub-divided into 554 portions of land.
23. Although the 2nd Defendant has exhibited a copy of the Grant for L.R. No. 10281 which is in its name, it is the Plaintiffs' case that the said land has been divided and allocated to them.

24. The authenticity of the said sub-division scheme; the Minutes of the then Council of Mavoko dated 7th May, 2005 and the purported temporary letters of allotment that were issued to the Plaintiffs can only be ascertained at the hearing of the suit. Indeed, the legality of the two Grants that were issued to the Defendants can also be ascertained by the court after trial.

25. Considering that the Plaintiffs have produced documents to show that they were allocated the plots indicated in the sub-division scheme, and in view of the uncertainty of the occupation of those plots by the Plaintiffs, the most prudent order to make in the circumstances of this matter is the maintenance of the *status quo*.

26. I say so because as much as the Defendants have the Grants in respect to the suit land, the origin of those Grants has to be ascertained, and so is the authenticity of the Plaintiffs' claim that they are not only in possession of the suit land, but that they have also developed most of those plots. Consequently, the suit land should be preserved in its present state pending the hearing and determination of the suit.

27. For those reasons, the court makes the following specific orders:

a. The prevailing status quo to be maintained pending the hearing and determination of the suit, meaning that neither the Plaintiffs nor the Defendants should alienate, transfer, develop or put up any kind of new structure or fence on the suit land.

b. Each party to bear his/her/its own costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 16TH DAY OF NOVEMBER, 2018.

O.A. ANGOTE

JUDGE