



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 419 OF 2017

ALEX KYALO MUTUA.....PLAINTIFF

VERSUS

KING'OO NGULASA.....DEFENDANT

RULING

1. In the Application dated 9th October, 2017, the Plaintiff is seeking for the following orders:

a. That pending the inter-partes hearing and determination of this suit, the Defendant, his servants, agents, family members and or in any manner howsoever be restrained from farming on, grazing on, building on, entering, trespassing, advertising, leasing, charging, selling, dealing with, conveying, sub-dividing, encroaching on and/or remaining on the Plaintiff's land title number Machakos Town Block 3/695 (the land) and/or interfering with the Plaintiff's registered, legal, contractual, equitable interests and/or rights of quiet ownership, possession, occupation and enjoyment thereof.

b. That pending the inter-partes hearing and determination of this suit, the Defendant, his servants and/or agents including his family members be restrained from chasing and/or denying the Plaintiff/Applicant access to his land parcel no. Machakos Town Block 3/695 (the land).

2. The Application is premised on the grounds that the Plaintiff is the registered proprietor of a parcel of land known as Machakos Town Block 3/695 (*the suit land*); that the Plaintiff purchased the suit land from Katelembo Athiani Muputi Farming and Ranching Co-operative Society Limited (*the Society*) and that the Defendant trespassed on the land in the year 2016 and erected illegal structures thereon.

3. The Plaintiff deponed that after the Defendant trespassed on the suit land, he started sub-dividing the said land and that unless an order of injunction is issued, he will suffer irreparably.

4. In his response, the Defendant deponed that he has settled on the land; that the Plaintiff's claim that he is the registered proprietor of the suit land is suspect and dubious; that there is no Agreement of Sale to show that the Plaintiff purchased the land from the Society and that he has built a permanent house on the suit land.

5. In the Further Affidavit, the Plaintiff deponed that the Respondent has not furnished to the court any ownership documents; that the Respondent's building was hurriedly built and is unapproved and that being the registered owner, the orders of injunction should issue.

6. Both the Plaintiff's and the Defendant's advocates filed submissions and authorities which I have considered.

7. The Plaintiff's case is that he purchased the suit land from Katelembo Athiani Muputi Farming and Ranching Co-operative Society Limited (*the Society*) and that he was issued with a Title Deed. The Title Deed that was annexed on the Plaintiff's Affidavit shows that the same was issued to the Plaintiff on 25th October, 2016. The Plaintiff has also annexed a copy of the letter of the Society in which the Society's officials informed the County Land Registrar that they had no objection with the issuance of the Title Deed to the Plaintiff.

8. However, the Plaintiff did not annex the Agreement of Sale that he entered into with the Society for the sale of the said land. Not being a member of the Society, the Plaintiff is expected to have paid a consideration for the suit land. The Plaintiff did not inform the court how much he paid for the land.

9. It is trite that a Title Deed is an end product of a process. The process of acquiring a Title includes entering into a Sale Agreement with the Transferor and signing the Transfer form. The burden of proving that one obtained a Title Deed lawfully lies with the Plaintiff.

10. Having not showed the Agreement that he entered into with the Society in respect of the suit land, I find that the Plaintiff has not established a prima facie case with chances of success. Indeed, the Plaintiff is not in possession of the suit land. The Plaintiff has admitted that the Defendant is the one who is in possession of the suit land, meaning that he will not suffer any irreparable damage that cannot be compensated by way of damages if the injunctive order is not granted.

11. Consequently, and for the reasons I have given above, I dismiss the Plaintiff's Application dated 9th October, 2017 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 7TH DAY OF DECEMBER, 2018.

O.A. ANGOTE

JUDGE