



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MACHAKOS**  
**E.L.C. NO.18 OF 2015**  
**BEATRICE NJERI NGANGA.....PLAINTIFF/APPLICANT**  
**VERSUS**  
**MUNYAO INGOKA.....DEFENDANT/RESPONDENT**  
**RULING**

The application before me is the one dated 23<sup>rd</sup> January, 2015 in which the Plaintiff is asking for the following reliefs:

- 1. THAT this Honourable Court be pleased to issue temporary injunction against the Respondent whether by himself, his servants, employees or persons acting under him from transferring, disposing, alienating, wasting, erecting structures, interfering with the Applicant's ownership and enjoyment of the suit property or in any way dealing with the suit property pending the hearing and determination of this suit.**
- 2. THAT a mandatory injunction against the Respondent, his agents, servants or any person acting under or for him requiring the Respondent, his agents, servants or persons acting under or for him to deliver vacant possession of the suit property to the Applicant.**
- 3. THAT costs of this application be provided for.**

The Application is supported by the Plaintiff's Affidavit in which she has deponed that she is the owner of a parcel of land known as Athi River/Athi River Block 1/863 ( the suit property) which she purchased from Michael Mulwa Mutindi on 28<sup>th</sup> June, 2012.

It is the Plaintiff's/Applicant's case that sometimes in the year 2013, the Respondent trespassed on the suit property and started wasting and damaging the said land.

In his response, the Defendant deponed that he is a son of the late Mutisya Ingoka; that the suit property formerly belonged to Katelembo Athiani Muputi Farming and Ranching Co-operative Society limited and that the late Mutisya Ingoka subscribed for shares in the said society.

According to the Defendant, his late father was allocated the suit property by the Society and that the same devolved to him after the demise of his father.

It is the Respondent's case that him, together with his family have been in occupation of the land and that

if the orders that the Applicant is seeking are granted, they will amount to eviction orders.

The Plaintiff's advocate submitted that the Applicant has shown that she acquired the suit property validly through a sale agreement; that a certificate of title was subsequently entered in her favour and that there is no evidence to show that the Applicant acquired the Title Deed fraudulently, unprocedurally, illegally or through a corrupt scheme.

Counsel submitted that the Respondent has no locus to reply to the suit in the name of a deceased person.

The Defendant's Counsel submitted that the person who sold the suit property to the Plaintiff was not the lawful owner of the land; that granting an injunction at this stage would amount to an eviction and that the Plaintiff has neither proved any special circumstances nor a clear case to warrant the grant of a mandatory injunction.

The Plaintiff's case is premised on the ground that she purchased the suit property from one Michael Mulwa Mutindi vide an agreement dated 28<sup>th</sup> June, 2012.

The Plaintiff has annexed on her Affidavit, a copy of the Title Deed that was issued to Michael Mutindi on 25<sup>th</sup> May, 2011 and the Title Deed that was subsequently issued to him, on 6<sup>th</sup> September, 2012.

The Defendant on the other hand claims that the suit property was allocated to his late father and that he is occupying the land on that basis.

The Defendant has annexed on his Replying Affidavit a copy of a letter from Katelembo Athiani Muputi Farming and Ranching Co-operative Society limited showing that the suit property is part of plot number 1312 which was owned by the society and which was allocated to member number 980.

Although the Defendant has not exhibited any evidence to show that the Society ever owned the suit property or plot number 1312, the Plaintiff did not annex a copy of the green card to enable the court to ascertain if indeed the person who sold to her the suit property was the first registered owner, or it was the Society.

Considering that the court will have to establish at trial the relationship between plot number 1312 and the suit property, and in view of the fact that the orders that the Plaintiff is seeking will amount to the eviction of the Defendant from the suit property, I find and hold that this is not an easy and clear case to warrant the issue of a mandatory injunction.

In the circumstances, the most appropriate order to issue in this matter is for the maintenance of the prevailing status quo pending the hearing and determination of the suit.

For those reasons, I make the following orders:

- a. **The application dated 23<sup>rd</sup> January, 2015 is dismissed with no order as to costs.**
- b. **The status quo prevailing at the date of this Ruling to be maintained pending the hearing and determination of this suit.**
- c. **Each party to bear his or her own costs.**

**It is so ordered.**

Dated, signed and delivered at **Machakos** this 27<sup>th</sup> Day of **January**, 2017.

**O. A. ANGOTE**

**JUDGE**