



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC CASE NO. 2 OF 2016**

**KASALU NZIOKA MWILU .....PLAINTIFF/APPLICANT**

**VERSUS**

**JOYCE NDUNGE MUTEI .....DEFENDANT/RESPONDENT**

**RULING**

The application before me is the one dated 24<sup>th</sup> March, 2016. In the Motion, the Plaintiff is seeking for the following orders.

- 1. That the Defendant/Respondent herself or her agents be restrained from selling, transferring or interfering with the Plaintiff's quiet possession of parcel No. Mavoko Town Block 3/2592 pending the hearing and determination of the main suit.**
- 2. Costs do abide the application.**

The Application is supported by the Affidavit of the Plaintiff who has deponed that the suit property is family land; that the Defendant is his sister – in- law; that it is him who is in possession of the land that the Defendant had the property fraudulently registered in her name.

The Defendant filed a Notice of Preliminary Objection and a Replying Affidavit. In the Preliminary Objection, the Defendant averred that the Plaintiff lacks capacity to file the suit against her.

In her Replying Affidavit, the Defendant deponed that the Applicant is victimizing her because she is a widow; that the Applicant's claim is against the Akamba customary law and that the land in question was registered in the name of her late husband.

In her Supplementary Affidavit, the Plaintiff deponed that the Respondent had the suit property unlawfully transferred to her because at the time of the transfer her father, Nzioka Mwilu, had died; that the purported transfer was done in the year 2001 and that she is the lawful beneficiary, heir and daughter of the deceased.

It is the Plaintiff's deposition that she is the one who is in possession of the suit property.

The advocates filed brief submissions which I have considered.

The Plaintiff's case is that being the daughter to the late Nzioka Mwilu Kitaa who died in 1996, she is the one who is entitled to the suit property and not the Defendant, who is her sister – in – law.

On the other hand it is the Defendant's case that the suit property was transferred to her late husband by her late father in law.

The Defendant has annexed on her affidavit a letter of allotment by Lukenya Ranching Farming Co-operative Society limited which shows that Vincent Mulei Nzioka was allocated the suit property on 22<sup>nd</sup> December, 1992.

Indeed, both the Plaintiff, being the daughter of the late Nzioka Mwilu and the Defendant's late husband, are entitled to the share of the Estate of the late Nzioka Mwilu.

Although the Plaintiff has deponed that the suit property was fraudulently registered in the name of his late brother in-law and now the Defendant, that issue can only be determined after trial.

The Defendant has not denied that it is the Plaintiff who is in possession of the suit land.

In the circumstances, the status quo prevailing now both in terms of occupation and the title should be maintained pending the hearing of the suit.

For those reasons, I allow the application dated 24<sup>th</sup> March, 2016 as prayed.

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

**O. A. ANGOTE**

**JUDGE**