



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

E.L.C. CASE NO. 4 OF 2015

SERAH NDUKU MUTEIPLAINTIFF

VERSUS

1. MARGARET MUIA NGILA

2. BETH DESFIRE

3. MWIKALI WAMBUA

4. MUENI MULWA

5. NDIKU MUNGUTI

6. MUTETI KIMATU

7. EVERLYN JANICE

8. ATANAS MUINDI MWILU).....DEFENDANTS

RULING

1. In her Application dated 14th January, 2015, the Plaintiff is seeking for the following orders:-

1. An order of injunction do issue against the defendants directing the defendants by themselves, their principals, servants and/or agents or in any other person acting on their behalf from encroaching, entering, cultivating, constructing, subdividing, beaconing or in any other manner interfering with land parcel No. Machakos/Kitanga/159 situated situated in Machakos County pending Hearing and determination of this suit.

2. A mandatory injunction do issue against the defendants directing the defendants by themselves, their principals, servants and or agents or any other person acting on their behalf to remove, demolish, pull down the fence and any other structures erected on land parcel No. Machakos/Kitanga/159.

3. An order directing the Machakos Land registrar to remove the caution placed on land parcel No. Machakos/Kitanga/159 by the 7th and 8th defendants.

4. An order that the OCS Machakos Police Station, Officer commanding Chumvi Police Base does provide the plaintiff with security whilst enforcing the court order for maintenance of

law and order and preservation of peace.

5. Costs be provided for.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that she is the lawful registered proprietor of all that parcel of land known as Machakos/Kitanga/159 measuring approximately 14.40 Hectares; that the Respondents claim as purchasers of the land is strange to him and that in any event the Respondents have never obtained the requisite consent to sub-divide and transfer the land within six months from the Machakos Land Control Board.
3. The Applicant has deponed that the Respondents have denied her the use of the land and that they have gone ahead to put a caution on the land.
4. In his reply, the 4th Respondent deponed that whereas it is true that the Applicant is the registered proprietor of the suit land, the land has always been the property of Muindu Mutua now deceased, that the Plaintiff, together with his step brother applied for and obtained Grant of Letters of Administration and that when the Grant was confirmed, the land was sub- divided into portions representing the two houses of the late Muindu Mutua.
5. It is the 4th Respondent's case that by the time the Succession matter was being processed in court, he had lived on the land for over 15 years.
6. It is the 4th Respondent's case that he purchased the land from the Applicant's late brother Muteti Muindu in 1999 and that the Plaintiff was aware of the sale.
7. On her part, the 1st Respondent deponed that she has lived on a portion of the suit property for over 35 years and has erected permanent structures; that her late husband bought a portion of the suit land from the Plaintiff's father and that she has acquired the land by virtue of the doctrine of adverse possession.
8. On his part, the 5th Respondent deponed that he has lived on the suit property for over 21 years; that he bought the land from the Plaintiff's brother Muteti Muindu and that the Plaintiff's late husband witnessed the sale.
9. The 2nd Respondent deponed that he bought a portion of the suit land from one of the wives of the deceased on 27th August, 1992 and that she has lived on the land for over 22 years with the knowledge of the Plaintiff.
10. On his part, the 3rd Respondent stated that he purchased a portion of the suit land from the Plaintiffs deceased brother in 1990 and that he has acquired the land by virtue of the doctrine of adverse possession.
11. In her Further Affidavit, the Plaintiff deponed that the 2nd, 3rd, 4th and 5th Respondents have admitted having purchased portions of the suit property from Muteti Muindu while aware that the land belonged to a deceased person who died in 1989; that legally ,Muteti Muindu had no capacity to enter into the said agreement and that the Consent of the Board was never obtained.
12. The Plaintiff's advocate filed brief submissions which I have considered.
13. It is not in dispute that the Plaintiff was registered as the proprietor of land known as Machakos/Kitanga/159 measuring 14.40 Hectares on 18th January, 2012.
14. It is not clear from the pleadings before this court how the Plaintiff had the said land registered in her name in the year 2012 and her relationship with the late Muteti Muindu who allegedly sold portions of the suit property to the Defendants.

15. From the documents annexed on the Respondents Affidavits, they purchased portions of the suit property in the 1990's.

16. Considering that before the suit land was registered in favour of the Plaintiff in the year 2012 it was part of a bigger portion of land, the Defendants claim that they have acquired interest in the suit property by virtue of the doctrine of adverse possession is not frivolous.

17. I say so because adverse possession has been defined as the non permissive physical control over land coupled with the intention of doing so, by a stranger having actual occupation, in opposition to and to the exclusion of all others including the true owner for a period of twelve years.

18. The Plaintiff will therefore have to show at trial why her predecessor did not file a suit as against the Defendants for ejectment before the lapse of 12 years before the court can conclusively hold that the Defendants should be evicted from the suit property.

19. In the circumstances, and in view of the agreements annexed on the Respondents' Replying Affidavits, I find and hold that the Plaintiff has not established a prima facie case with chances of success. The Plaintiff has also not established which irreparable injury she shall suffer if the injunctive order is not issued considering that the Defendants having been living on the land way before she acquired the title document in the year 2012.

20. For those reasons, I dismiss the Application dated 4th January, 2014 with costs.

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

O. A. ANGOTE

JUDGE