



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**E.L.C. CASE NO.1 OF 2016**

**REBECCA M WIKALI JACOB.....PLAINTIFF/APPLICANT**

**VERSUS**

**PETER NICHOLAS MUTUKU .....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**STELLAMARIS NZILANI MUTUKU .....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**LAND REGISTRAR MACHAKOS**

**COUNTY .....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

What is before me is the Application by the Plaintiff dated 31<sup>st</sup> March, 2016 in which she is seeking for the following orders:

**(1)That the Defendants/Respondents themselves or their agents be restrained from selling, transferring or interfering with the Plaintiffs quiet possession of parcel No. Ndithini/Mananja Block 5/44 pending the hearing and determination of the main suit.**

**(2) Costs do abide the application.**

The Application is premised on the ground that the Plaintiff is in possession of the suit premises; that the Plaintiff has extensively developed the land and that the Defendant had the land registered in their names fraudulently.

In response, the 2<sup>nd</sup> Respondent deponed that the Applicant is not the registered proprietor of the suit property;that the suit property is registered in her name and the 1<sup>st</sup> Respondent's name and that due process was followed in the registration of the land in their names.

It is the 2<sup>nd</sup> Respondent's case that the Applicant has other properties namely Plot No.56 and 58 in Ndithini Settlement Scheme which were bequeathed to her late husband; that she settled on plot No.56 with her late husband; that the Applicant is not and has not been in possession of the suit property as alleged and that it is her sons who are illegally occupying the land.

It is the 2<sup>nd</sup> Respondent's case that the Applicant and her late husband have had litigation in Machakos HCCC No. 188 of 2008 (formerly HCCC. No. 92 of 2003) and Succession Cause No. 283 of 2012 and that the Applicant was found guilty of misgivings in the said suits.

On his part, the 1<sup>st</sup> Respondent deponed that the suit property is in the occupation of the Applicant's adult sons who forcefully moved on the land on the instruction of the Applicant and her late husband in the year 2003 as a precursor to their father filing HCCC No. 92 of 2003.

The 1<sup>st</sup> Respondent deponed that the Applicant's husband died in the year 2010 before establishing his claim in HCCC.No.92 of 2003; that the suit was struck out on 4<sup>th</sup> June, 2012 after abating; that the Applicant then applied for letters of Administration in Succession Cause No. 283 of 2012 and that the court stayed further proceedings in the succession matter until the Applicant establish her title to the suit property.

It is the 1<sup>st</sup> Respondent's deposition that the Applicant's late husband' just like him and other persons, were members of Kangundo Farming and Ranching Company (Ithanga) limited, by virtue of which the deceased owned Plot No.56 comprising approximately 42.9 acres and plot No.58 measuring about 15 acres.

The 1<sup>st</sup> Respondent finally deponed that the Applicant is attempting to revive the suit that abated; that the Applicant has not established a prima facie case with chances of success or how she will suffer irreparable damage which cannot be compensated by an award of damages and that the Application is frivolous.

In her further affidavit, the Plaintiff has deponed that she is a purchaser for value of the suit property; that she has been in possession of the land for 22 years and that she is challenging the minutes of 13<sup>th</sup> March, 2015 that the Respondents used to transfer the title to themselves.

The advocates file their submissions which I have considered.

In the Plaint dated 8<sup>th</sup> January, 2016 the Plaintiff has described herself as the legal representative of the Estate of Jacob Kithuka, who, according to her, was the owner of a portion of land measuring 56.33 Acres.

In the Plaint, the Plaintiff has averred that the late Jacob Kithuka purchased the suit property from the late Kioko Makau. The Plaintiff is seeking for the revocation of the title deed that was issued to the 1<sup>st</sup> and 2<sup>nd</sup> defendants by the company.

The Plaintiff has not annexed any document on her Supporting Affidavit to show the legal or beneficiary interest that she has in the land.

There is no indication to show that the Plaintiffs late husband indeed purchased land known as Ndithini/Mananja Block 5/44 measuring approximately 33.462 Hectares currently registered in the name of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

There is also no evidence to show that before Kangundo farming & Ranching Company agreed to have the suit property registered in favour of the Defendants, it is the Plaintiff or her late husband who was entitled to the suit property.

The Plaintiff has not denied the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' assertion that she owns plot No.56 and 58 within Ndithini Scheme in Masinga measuring; 42.9 and 15 acres respectively; that indeed her late husband sued Kangundo Farming and Ranching Company (Ithanga Limited) claiming for the same land before the suit abated and that she has been unco-operative with the company and other members during the demarcation and sub-division process.

Having not denied that she has settled on Plot No.56, and in view of the resolution of the Company and the provisions of Article 4 of the Articles of Association of the Company which states that the Company had the sole discretion to allocate shares to its members, I find that the Plaintiff has not shown a prima

facie case with chances of success.

Having failed to revive HCCC No.92 of 2003 in which her late husband had sued the Company for the same piece of land, I find that the current application by the Plaintiff seeking for injunctive orders has been filed with unclean hands and more so considering that she has other parcels of land in the same settlement scheme.

Furthermore, the Plaintiff has not shown that she will suffer any irreparable damage that cannot be compensated in damages in view of the uncontested allegation that she has settled on plot number 56.

For those reasons, I find and hold that the Application dated 31<sup>st</sup> March, 2016 does not meet the threshold for the grant of the orders of injunction.

Consequently, the Application dated 31<sup>st</sup> March, 2016 is dismissed with costs.

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

**O. A. ANGOTE**

**JUDGE**