



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 105 OF 2016

SUSAN MBULA MWOVE.....PLAINTIFF/APPLICANT

VERSUS

MUTISYA MUTUNGA.....DEFENDANT/RESPONDENT

RULING

1. In the Application dated 14th September, 2016, the Plaintiff is seeking for the following orders:

a. An order of temporary injunction do issue against the Defendant by himself and or his agents, servants or any other persons claiming under or through him restraining them from entering, trespassing upon, grazing livestock, cultivating and felling down trees or vegetation, erecting any structures or otherwise in any other manner whatsoever interfering with the Plaintiff's/Applicant's land parcel Plot No. Kibwezi/Mang'elete/2262, pending final hearing and determination of this suit.

b. The costs of this Application be provided for.

2. According to the Affidavit of the Plaintiff, she was registered the proprietor of parcel of land number Kibwezi/Mang'elete/2262 (*the suit property*); that the Defendant has trespassed on the land and has been grazing livestock, cultivating and felling trees on the land and that the Defendant's actions have deprived him the use of the land.

3. In response, the Defendant deponed that he purchased the suit property from David Nzioka Mwove; that the Plaintiff sold the suit land to the said David Nzioka and that he was issued with the certificate of ownership on 24th February, 2016.

4. In her Supplementary Affidavit, the Plaintiff deponed that the said David Nzioka Mwove has never had a title to the suit property; that the Defendant is not in occupation of the land and that she is the one who should continue using the land.

5. I have considered the submissions by the Plaintiff's and the Defendant's advocate together with the authorities.

6. The Plaintiff's claim is that she is the proprietor of the suit land. On the other hand, the Defendant has claimed that he purchased the suit land from one David Nzioka Mwove.

7. The Plaintiff has not annexed any document on her Affidavit to show that *prima facie*, she is the owner of the suit.

8. From the documents annexed on the Defendant's affidavit, it would appear that the suit property is in an area within which the adjudication process is going on.

9. The Defendant has annexed a letter dated 24th February, 2016 purportedly authored by the Sub-County Land Adjudication and Settlement Officer.

10. In the said letter, the Adjudication and Settlement Officer has stated that parcel No. 2262 Mang'etele Settlement Scheme was demarcated in the name of David Nzioka Mwove who later on transferred it to the Defendant. However, the register in respect to the suit land was not exhibited.

11. Considering that neither the Plaintiff nor the Defendant have a title document to the suit property, and in view of the absence of evidence to show which party is in occupation of the land, the most appropriate order to make is for both parties to keep off the suit property pending the hearing and determination of the suit.

12. For those reasons, the court makes the following orders:

a. Neither the Plaintiff nor the Defendant should access the suit property or use it in any manner whatsoever or sell it pending the hearing and determination of the suit.

b. Each party to bear his or her own costs.

DATED AND DELIVERED AT MACHAKOS THIS 24TH DAY OF MARCH, 2017.

OSCAR A. ANGOTE

JUDGE