



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC CASE NO. 267 OF 2012

NDUMI MUTINDAPLAINTIFF/APPLICANT

VERSUS

FREDRICK MAKAU KIMOTHO.....1ST DEFENDANT/RESPONDENT

THE DISTRICT LAND REGISTRAR....2ND DEFENDANT/RESPONDENT

RULING

1. The Application before me is the one dated 27th July, 2016. In the Application, the Plaintiff is seeking for the following orders:

a. That a temporary injunction restraining the 1st Defendant by himself, his agents, servants and/or nominees from transferring, sub-dividing, developing, wasting or in any other way dealing with or interfering with land parcel Mulango/Kavisuni/1004 pending hearing and determination of this suit.

b. That the costs of this Application be borne by the 1st Defendant.

2. The Application is premised on the grounds that the Applicant, jointly with her husband, were the registered proprietors of parcel of land number Mulango/Kavisuni/1004 (*the suit property*); that the suit property was fraudulently transferred to the 1st Defendant and that the 1st Defendant invaded the suit property on 25th July, 2016 and started fencing it.

3. It is the deposition of the Plaintiff that she has never transferred the suit property to the 1st Defendant or at all and that she has been in possession of the land for more than forty (40) years.

4. In response, the 1st Defendant deponed that the Plaintiff does not hold a Title Deed in respect to the suit property; that the Applicant is not and has never been in occupation of the land as alleged and that the Applicant has her own land being Mulango/Kavisuni/8.

5. It is the 1st Defendant's deposition that the Applicant and her late husband, Joel Mutinda Nguli sold to him the suit land and caused it to be transferred to him and that he is the one who is in possession of the land.

6. The advocates for the parties filed their brief written submissions which I have considered.

7. In the Plaint, the Plaintiff is challenging the transfer of the suit property to the 1st Defendant.

8. According to the particulars of fraud, the Plaintiff has alleged that the suit property was transferred to the 1st Defendant without her consent; that the Land Control Board did not give its consent for the transfer of the land and that she never appeared before the 2nd Defendant to sign the transfer documents.

9. It is not in dispute that initially, the suit property was registered in favour of the Plaintiff and her late husband.

10. Although the 1st Defendant has annexed the transfer document showing that the Plaintiff and her late husband transferred the land to him on 24th April, 1992, the Plaintiff has denied ever signing the said transfer document before the Land Registrar.

11. The person who purportedly witnessed the signing of the transfer document has not filed any affidavit to confirm that indeed the Plaintiff and her late husband appeared before him on 24th April, 1992 to sign the said Transfer.

12. The Application for the consent of the Board was never signed by the Plaintiff and her late husband. The Defendants have also not annexed the consent of the Board allowing the transfer of the suit property which is a requirement before any transfer in respect of agricultural land can be effected.

13. Although the particulars of fraud will have to be proved by the Plaintiff at trial, I am satisfied that the Plaintiff has established a *prima facie* case with chances of success.

14. In the circumstances, I allow the Application dated 27th July, 2016 as prayed.

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

OSCAR A. ANGOTE

JUDGE