



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MACHAKOS
ELC CASE NO. 58 OF 2016

JOHN MASWILI MULWA.....PLAINTIFF

VERSUS

MUNYWOKI KISESE.....1ST DEFENDANT

NZOMO MUNYWOKI.....2ND DEFENDANT

MASILA MUNYWOKI.....3RD DEFENDANT

VAVU MUNYWOKI.....4TH DEFENDANT

RULING

1. This Ruling is in respect to the Plaintiff's Application dated 27th July, 2016. In the Application, the Plaintiff is seeking for the following orders:

a. That the Respondents by themselves or their agents be restrained from constructing new structures, cultivating or using in a destructive manner parcel No. Nzaiu/Mumbuni/210 pending the hearing and determination of the main suit.

b. That this Honourable Court do issue an order directing County Surveyor Makeni County to determine the boundary between parcel No. Nzaiu/ Mumbuni/210 and parcel No. Nzaiu/Kilili/610 and file a report thereto pending the hearing and determination of the main suit.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that he is the legal representative of the Estate of Mbili Mulwa; that Mbili Mulwa is the registered proprietor of parcel of land number Nzaiu/Mumbuni/210 and that the Defendants have trespassed on the suit land and are carrying out acts of waste and destruction.

3. According to the Plaintiff, the Defendants have insisted that they are occupying their land which is parcel of land number Nzaiu/Kilili/610 and not plot number 210.

4. The Plaintiff's prayer is that it is only fair that a Surveyor be sent to determine the boundaries.

5. In response, the 1st Defendant deponed that the Application is bad in law and should be struck out in limine; that the Respondents have always been in possession of parcel of land known as Nzaiu/Kilili/610

and that they have not encroached in the land as claimed by the Plaintiff.

6. The Plaintiff's and the Defendants' advocates filed brief submissions which I have considered.

7. The Plaintiff has annexed on his Affidavit the Grant of Letters of Administration Intestate. The said Grant shows that the Plaintiff is the legal representative of the Estate of Mbili Mulwa. Mbili Mulwa is the registered proprietor of parcel of land known as Nzai/Mumbuni/210.

8. The Defendants' claim is that they are occupying plot number 610 and not 210. It would appear that what is before the court is a boundary dispute, or a case in which one party is not aware where his land is, which, according to the provisions of Section 18 of the Land Registration Act should be resolved by the District Land Registrar.

9. In the circumstances, this court makes the following orders:

a. The Makueni District Land Registrar and the Surveyor to visit parcels of land numbers Nzai/Mumbuni/210 and Nzai/Kilili/610 and locate the position of each land viz-a-viz each other.

b. The Makueni District Land Registrar and the Surveyor to file their report in this court within sixty (60) days from the date of this Ruling.

c. The status quo prevailing now to be maintained pending the hearing of the suit or further orders of this court.

DATED AND DELIVERED AT MACHAKOS THIS 3RD DAY OF MARCH, 2017.

OSCAR A. ANGOTE

JUDGE