



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 113 OF 2016**

**ROBINA MWIKALI WAMBUA.....1<sup>ST</sup> PLAINTIFF**

**FLOSSIA MARY MBISA WAMBUA .....2<sup>ND</sup> PLAINTIFF**

**JOSEPHINE KALEE WAMBUA .....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**MARGARET NTHUNYA NGAU.....DEFENDANT**

**RULING**

1. The Notice of Motion dated 21<sup>st</sup> July, 2016 filed by the Plaintiffs is seeking for the following orders:

***a. That pending the hearing [and] determination of the present suit this Honourable Court be pleased to issue a temporary injunction against the Defendant and/or his agents, servants, employees restraining them [from] entering, trespassing, erecting building, selling and/or in any way dealing with Mavoko Block 3/24229, Mavoko Block 3/24231 and Mavoko Block 3/24232.***

***b. That the costs of this Application be in cause.***

2. According to the Affidavit of the 1<sup>st</sup> Plaintiff, she is the registered proprietor of land known as Mavoko Block 3/24231 while the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs are the proprietors of Mavoko Block 3/24232 and 24229 respectively.

3. The 1<sup>st</sup> Plaintiff has deponed that on various dates between January, 2016 and July, 2016, the Defendant trespassed on the three (3) suit properties; that each of the children of the late Wambua Nguitha Maitha was allocated an equal share of the land that formed parcel of land number Mavoko Block 3/2266 and that the Defendant should be restrained from trespassing on the suit land.

4. In her Replying Affidavit, the Defendant deponed that her name is Margaret Mbinya Ngao; that the suit properties are a sub-division of land known as Mavoko Town Block 3/2266 which belongs to the Estate of Wambua Nguitha Maitha also known as Wambua Nyuyo who died on 24<sup>th</sup> September, 1999 and that the said Wambua Nguitha Maitha was his father-in-law having been married to his son, Gregory Ngao Wambua who died on 9<sup>th</sup> September, 2013.

5. It is the Defendant's case that in 1994, his late father-in-law showed her where to settle on parcel of land number Mavoko Block 3/2266 and that the grant in respect of the said land was confirmed in Succession Cause No. 400 of 2006.

6. When her brother-in-law challenged the grant, the Defendant has deponed that the said grant was revoked by the court; that the revocation of the grant invalidated all the titles that had been processed and that the Applicants sub-divided Plot No. 2266 in an attempt to disinherit her and render her a destitute.
7. In his submissions, the Plaintiffs' advocate submitted that the Ruling in Succession Cause No. 400 of 2006 is subject to review; that the Respondent cannot rely on the Ruling in this matter and that the Respondent is keen of dispossessing the Applicants of their share of the estate of their late father.
8. The Respondent's advocate submitted that once the grant was revoked, all the titles that were issued under the grant became null and void; that if the court proceeds to allow the Application, it would amount to overturning the decision of another judge and that the Defendant is not a trespasser.
9. It is not in dispute that the three (3) suit properties are a sub-division of parcel of land known as Mavoko Block 3/2266 which was registered in favour of the Plaintiffs' father and the Defendant's father-in-law (*deceased*).
10. Although the Plaintiffs have exhibited Title Deeds showing that they became the registered proprietors of the three (3) parcels of land on 21<sup>st</sup> June, 2013, the Plaintiffs have not denied that they were registered as such by way of transmission.
11. The Defendant has annexed on her Affidavit the Certificate of Confirmation that was issued on 1<sup>st</sup> February, 2012 by the High Court in Machakos Succession Cause No. 400 of 2006.
12. The said Certificate of Confirmation shows that plot number 2266 was sub-divided amongst six (6) beneficiaries of the Estate of the late Wambua Nguitha Maitha.
13. When one of the brothers of the Plaintiffs challenged the said Confirmation of Grant in Machakos Succession Cause No. 400 of 2006, the court, vide a Ruling dated 2<sup>nd</sup> December, 2015, agreed with the Applicant that some of the beneficiaries, including the Defendant herein, were displaced from their homes during the process of distribution of the estate. On that ground, the court revoked the Confirmation of Grant that had been issued.
14. In view of the Ruling of the court in Machakos Succession Cases No. 400 of 2006 revoking the Confirmation of Grant, the Applicants cannot rely on the impugned Title Deeds to claim that they are the registered owners of the suit properties.
15. Indeed, the said Title Deeds ought to be cancelled for the purpose of having the Estate of the late Wambua Nguitha re-distributed.
16. Until the said re-distribution of the Estate of the late Wambua by the High Court, the Defendant is entitled to continue occupying the land that she has been occupying.
17. For those reasons, I find and hold that the Plaintiffs' have not established a *prima facie* case with chances of success.
18. In the circumstances, I dismiss the Application dated 21<sup>st</sup> July, 2016 with costs.

**DATED AND DELIVERED AT MACHAKOS THIS 3<sup>RD</sup> DAY OF MARCH, 2017**

**OSCAR A. ANGOTE**

**JUDGE**