



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 499 OF 2016

PIDDAN MUSAU KATULA & CHRISTINE MUTILE MWANGI

(Suing as legal representatives and the administrators of

the Estate of STEPHEN KATULA MUYENDI)..... PLAINTIFF

VERSUS

SILAS MUSAMBAYI KHAEMBA (Being sued

on his own behalf and on behalf of 41 others)..... DEFENDANTS

RULING

Stephen Katula Muyendi, deceased (hereafter referred to only as “the deceased”) is the registered owner of all that parcel of land known as L.R. No. Mavoko Town Block 3/2/111 (hereinafter referred to as “the suit property”). The Plaintiffs are the legal representatives of the estate of the deceased who died on 19th June, 1979. The Plaintiffs were issued with Grant of Letters of Administration Intestate on 19th March, 2014. The Plaintiffs brought this suit against the Defendants seeking an order of eviction from the suit property, a permanent injunction restraining the Defendants from encroaching, entering, selling, developing, disposing of or in any other manner interfering with the Plaintiffs’ quiet possession and ownership of the suit property, general damages and mesne profits.

Together with the plaint, the Plaintiffs brought an application under Certificate of Urgency seeking interlocutory injunction restraining the Defendants from entering, trespassing, encroaching, dealing with, alienating, transferring and/or interfering with the Plaintiffs’ peaceful enjoyment of the suit property until the hearing and determination of the suit. The application which was supported by the affidavit of Christine Mutile Mwangi was brought on the grounds that the Defendants have illegally invaded and occupied the suit property which is owned by the deceased and that as a result of this invasion, the Plaintiffs were unable to undertake any development on the suit property and/or to manage the same. The Plaintiffs contended that they had not consented to the Defendants entry onto the suit property.

The application was opposed by the Defendants through affidavit sworn by the 2nd Defendant on 9th May, 2016. The Defendants stated that they were not aware that the suit property was owned by the deceased. The Defendants stated that they purchased portions of the suit property measuring 50 by 100 feet and 50 by 50 feet from a company known as **MBUKONI HOLDINGS LIMITED** (hereinafter “Mbukoni”) on diverse dates from the year 2006 and were issued with share certificates by the said company. The Defendants stated that as at the time of purchase of the said portions of the suit property, they knew that the suit property was owned by Mbukoni. The Defendants stated that they were informed that Mbukoni had acquired the suit property from one, Reuben Katula. The Defendants stated that they had been in

occupation of the suit property since 2006 as bona fide purchasers of portions thereof from Mbukoni. The Defendants stated that they had sued Mbukoni to be issued with titles for the portions of the suit property which they are occupying. The Defendants stated further that since they purchased and entered the suit property in 2006, the Plaintiffs had never laid a claim over the property until when they brought this suit. The Defendants contended that they would suffer irreparable loss if the orders sought are granted as they would lose their homes which they have occupied for the last 10 years.

The application was argued before me on 10th October 2016 when Mr. Were appeared for the Plaintiffs and Ms. Wanjiru for the Defendants. Mr. Were submitted that the deceased's title over the suit property was not challenged. He submitted that the Defendants claimed to have purchased the suit property from a third party who has never owned the property. Counsel submitted that the Defendants' claim if any lies against the said third party. He submitted that the fact that the Defendants were duped into buying the suit property does not confer upon them any title over the suit property. Mr. Were submitted that the Defendants have no title over the suit property and that their remedy lies in damages against the third party who purported to sell the same to them. Counsel submitted that the Defendants are trespassers on the suit property and should give way to the Plaintiffs pending the hearing of the suit. In her brief submissions in reply, Ms. Wanjiru submitted that the share certificates which were used to the Defendants by Mbukoni are sufficient evidence that the Defendants own the suit property.

I have considered the Plaintiff's application and the response thereto by the Defendants. The principles upon which this court exercises its discretion in applications of this nature are well-settled. The applicant must show a prima facie case with probability of success and demonstrate that he will suffer irreparable injury which cannot be compensated in damages if the order sought is not granted. If the court is in doubt, the application would be determined on a balance of convenience. See, the case of Giellavs. Cassman Brown & Co. Ltd. (1973) E. A 358. On the material before me, I am satisfied that the Plaintiffs have established a prima facie case with a probability of success against the Defendants. The Plaintiffs have proved that the suit property is owned by the deceased. On the other hand, the Defendants who claim to have acquired the suit property from Mbukoni have not demonstrated that Mbukoni has ever owned the suit property or any part thereof. The Defendants have also not established their titles to the portions of the suit property which are under their occupation. I am also satisfied that the Plaintiffs would suffer irreparable injury which cannot be compensated in damages.

Due to the foregoing, I am satisfied that the Plaintiffs have met the conditions for grant of a temporary injunction. The Plaintiffs have sought among other orders, an injunction restraining the Defendants from entering, trespassing or encroaching on the suit property. At the request of the court, the advocates for the parties supplied the court with photographs taken from the suit property showing the status thereof as at the time the parties were arguing the present application. The said photographs show that the Defendants are in occupation of the suit property. Most of them have put up residential houses which are occupied. The said photographs show that most of the buildings on the suit property were put up several years ago. In the circumstances, although the Plaintiffs have established that they are entitled to a temporary injunction, this court cannot restrain the Defendants who are residing on the suit property from entering their homes. I would therefore allow the Plaintiff's application dated 9th May, 2016 on the following terms:-

(i) Pending the hearing and determination of this suit or further orders by the court, the Defendants by themselves or through their agents, servants or employees are jointly and severally restrained from alienating, selling, transferring or carrying out any other or further construction on all that parcel of land known as Mavoko Town Block 3/2111 or any portion thereof.

(ii) Save for the Defendants who have constructed houses or buildings to completion on all that parcel of land known as Mavoko Town Block 3/2111, all other Defendants are jointly and severally restrained from entering the said property or any portion thereof pending the hearing and determination of this suit.

(iii) Save for the portions of all that parcel of land known as Mavoko Town Block 3/2111 which are in actual occupation or possession of the Defendants or any of them, the Defendants are jointly and

