



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 43 OF 2014

HANZON MUINDI MUTULA.....1ST PLAINTIFF
TITUS MUTEI MUTISO2ND PLAINTIFF
JONATHAN MWAKE MULI.....3RD PLAINTIFF
ELIJAH MAINGI KAMOSU.....4TH PLAINTIFF
PATRICIA NDUKU MUINDI.....5TH PLAINTIFF
STEPHEN S.K.KISSILI.....6TH PLAINTIFF
ROSE MUTETE MUTISO.....7TH PLAINTIFF
MONIKA NDUNGE KIATINI.....8TH PLAINTIFF

VERSUS

KENNEDY MUTUA NGUNU.....1ST DEFENDANT
MBILO MALONZA.....2ND DEFENDANT
WILLIAM MBUVI.....3RD DEFENDANT

RULING

1. In the Application dated 5th June, 2014, the Plaintiffs are seeking for the following orders:

1. That the defendants by themselves, their agents servants or howsoever be restrained from carrying out any works or howsoever interfering with the suit property the Plaintiffs' unsurveyed commercial plot at Emali Township pending the hearing and determination of this suit.

2. That the costs of this Application be provided for.

2. The Application is premised on the grounds that the Plaintiffs are the owners of an unsurveyed commercial plot at EMALI TOWNSHIP; that the Defendants unlawfully invaded and fenced off the said plot and that the Defendants work on the land will change the nature of the suit property.

3. In his Supporting Affidavit, the 1st Plaintiff deponed that the Plaintiffs are members of a community based self help group known as TUTINI KALIMA SELF HELP GROUP; that the group was allocated the suit property in the year 1998 and that they paid all the requisite dues to Makueni County Council.
4. According to the Plaintiffs, they applied to the Commissioner of Lands to be issued with the title document and that the Ministry of Lands issued them with a notice of completion of a development plan.
5. While awaiting the issuance of a Title Deed, it has been deponed by the 1st Plaintiff that the 1st Defendant was fraudulently registered as the proprietor of the same land; that the 2nd Defendant has proceeded to sink a borehole on the land and that the Plaintiffs are unable to develop the land.
6. According to the deposition of the 1st Plaintiff, the orders that they are seeking will go a long way in preserving the subject matter.
7. In response, the 1st Defendant deponed that he is the registered proprietor of a leasehold interest in a parcel of land known as Emali Town Block 1/222 measuring 0.7680Ha; that the Plaintiffs' letter of allotment refers to a piece of land in Makueni; that the Applicants' annexure "HMM4" does not make reference to any plot and that the notice of completion of the development plan referred to in the Application refers to PDP number MKN/70/97/22 whilst the part development plan annexed on the Affidavit refers to plan number MKN/70/97/34.
8. The 1st Defendant deponed that he is yet to carry out any developments on his plot; that the Applicants have not proved that he acquired the plot fraudulently and that the Applicants have not shown that they have a prima facie case with chances of success.
9. On his part, the 2nd Defendant deponed that he is the registered proprietor of a parcel of land known as Emali Town Block 1/233; that he was registered as the owner on 5th September, 2012 and that a Certificate of Lease was issued to him.
10. The Plaintiffs' and the Defendants' advocates filed their respective submissions and authorities. I have considered those submissions and authorities.
11. The evidence before this court shows that on 27th October, 1998, the Plaintiffs, a self help group, were allocated by the Makueni County Council a piece of land identified on plan number MKN/70/97/34. The Plaintiffs have attached on their Affidavit the letter of allotment dated 27th October, 1998 together with receipts showing the payments that they made to the county council for the said plot.
12. The Plaintiffs have also annexed a copy of the Application they made towards the issuance of the Title Deed for the plot that was allocated to them; the receipts evidencing the payments they made for the preparation of the part development and the notice that was issued showing the completion of the development plan.
13. The Plaintiffs have further annexed the development plan that was duly approved by the then Commissioner of Lands and the Director of Physical Planning for a plot measuring 1.22Ha. The approved development plan is shown as reference number MKN/70/97/34, the same number that is indicated in the letter of allotment of 27th October, 1998.
14. Other than the Certificate of Leases for Emali Town Block 1/222 and 223 that have been annexed on the Defendants' Affidavits, the Defendants have not explained at all the processes that they followed to have the said Certificates of Leases issued to them.
15. Indeed, considering that the Certificates of Leases annexed on the Defendants' Affidavits shows that the said plots were initially government land, the Defendants should have annexed on their Affidavits the letters of allotment and the approved Part Development Plans for the said parcels of land.

16. It is trite that the issuance of a Certificate of Lease is an end product of a process, which process must be proved by way of evidence.

17. The Defendants having failed to show that the two Certificates of Leases do not fall within the land that had already been allocated to the Plaintiffs, and having failed to show that indeed they were allocated the land by the government before the said Certificates of Leases were registered, I find and hold that the Plaintiffs have established a prima facie case with chances of success.

18. Indeed, if the Defendants are allowed to deal with the suit property, the Plaintiffs will suffer irreparable loss.

19. For those reasons, I allow the Plaintiffs' Application dated 5th June, 2014 as prayed.

DATED, SIGNED and DELIVERED in MACHAKOS this 19th DAY OF MAY, 2017.

O. A. ANGOTE,

JUDGE.