



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 29 OF 2017

ALEX MUEMA KIMANZI1ST PLAINTIFF

MUTUA MICHAEL KIMANZI2ND PLAINTIFF

JANE KAMENE KISANGA3RD PLAINTIFF

VERSUS

DAVID KAVYUDEFENDANT

RULING

1. In the Notice of Motion dated 7th February, 2017 the Plaintiffs are seeking for the following orders:

(a) An order of injunction do issue restraining the Respondent by himself or through his agents, servants, employees from entering, encroaching, trespassing, working on, cultivating, cutting down trees or in any other manner whatsoever interfering with land parcels Yatta B2/Kwa Vonza/811, 812, 813 and 814 properties belonging to the Plaintiffs herein pending hearing and determination of this suit.

(b) The Officer Commanding Kwa Vonza Administration Police Post and/or Kitui Police Station do enforce compliance and provide security to the process server.

2. According to the Affidavit of the 1st Plaintiff, the Plaintiffs are the lawful registered proprietors of the suit properties; that the Respondent who is their neighbour has encroached on the suit land and that the Respondent has been unwilling to resolve the boundary dispute as between themselves.

3. In response, the Defendant deponed that his land being Yatta B2/Kwa Vonza/819 borders the Plaintiffs' land; that it is the Plaintiffs who have trespassed on his land and that the Plaintiffs are now in possession of their land.

4. Both the Plaintiffs' and the Defendant's advocates relied on the Affidavits on record.

5. It is not in dispute that the Plaintiffs' suit properties neighbour the Defendant's parcel of land.

6. Indeed, what is before the court is a boundary dispute in respect of two parcels of land which are registered under the Land Registration Act.

7. Section 18(2) of the Land Registration Act provides that the court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been

determined in accordance with the Section.

8. Section 18(3) of the Act mandates the Land Registrar to determine any dispute in respect to boundaries that have not been fixed.

9. The Plaintiffs have not annexed any document to show that they engaged the Land Registrar to determine the dispute between them and the Defendant.

10. In the absence of a report by the Registrar of Lands, this court is unable to ascertain who between the Plaintiffs and the Defendant has actually committed the act of trespass.

11. For those reasons, I find that the Plaintiffs have not established a *prima facie* case with chances of success.

12. In the circumstances, I dismiss the Application dated 7th February, 2017 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 30TH DAY OF JUNE, 2017.

O.A. ANGOTE

JUDGE