



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 82 OF 2015**

**DOMINIC KAVISI NZULU .....PLAINTIFF**

**VERUS**

**ALICE MUENI KAVISI.....1<sup>ST</sup> DEFENDANT**

**JACOB KALOKI KAVISI .....2<sup>ND</sup> DEFENDANT**

**JOB NZUMA KAVISI .....3<sup>RD</sup> DEFENDANT**

**RULING**

1. What is before me is the Application dated 11<sup>th</sup> March, 2015 by the Plaintiff in which he is seeking for the following orders:

***a. That the Defendants/Respondents or their agents or servants be restrained by an order of injunction from cutting or damaging grass or trees for charcoal on the land or cultivating or selling or transferring or charging the said land or alienating the land in any other manner the parcel of land known as Machakos/Katangi/191 until this suit is heard and determined.***

***b. That the Respondents/Defendants be restrained by an order of injunction from chasing or stopping the Applicant/Plaintiff from entering his home in the parcel of land known as Plot No. 191 until this Application is heard and determined.***

2. In support of the Application, the Plaintiff has deponed that the 1<sup>st</sup> Defendant is his wife; that he is the beneficial owner of land known as Machakos/Katangi/191 which was registered in the names of the Defendants during the adjudication process and that the suit land was part of the land that belonged to his father.

3. According to the Plaintiff, when he returned from Tanzania in the year 2005, he developed the suit land and had plot number 193 registered in his name; that he requested the Defendants to move to plot number 193 and for them to transfer the suit land to him which they declined and that they chased him from the house that is on plot number 191.

4. It is the Plaintiff's case that the Defendants should move on plot number 193 where their matrimonial home is situated and transfer plot number 191 to him.

5. In response, the 1<sup>st</sup> Defendant deponed that she is the 2<sup>nd</sup> wife of the Plaintiff; that she has been married to the Plaintiff since 1979; that in 1986, she purchased the suit land with the Plaintiff and that they put up a four bed-roomed house on the land.

6. According to the 1<sup>st</sup> Defendant, she has substantially developed the suit land since then and that the Plaintiff can move on plot number 193 if he so wishes.
7. The 1<sup>st</sup> Defendant deponed that there was another suit being Machakos CMCC No. 262 of 2013 filed by the Plaintiff and raising similar issues.
8. The advocates filed brief submissions which I have considered.
9. The 1<sup>st</sup> Defendant is the Plaintiff's second wife while the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are his children.
10. The Plaintiff has admitted that the Defendants have always resided on the suit land since 1993 when the land was registered in their favour.
11. The Plaintiff's case is that parcel of land number Machakos/Katangi/191 (*the suit land*) is registered in the Defendants' names while parcel of land number 193 is registered in his name. According to the Plaintiff, he wants the Defendants to transfer the suit land in his name and move on plot number Machakos/Katangi/193.
12. It is not clear to this court why the Plaintiff wants to move his family from a parcel of land that they have developed and where they have lived since 1993.
13. Considering that the suit land is registered in favour of the Defendants, and the Plaintiff having admitted that the Defendants have always lived on the suit land, I find and hold that the Plaintiff has not established a *prima facie* case with chances of success.
14. In view of the admission by the Plaintiff that he has developed plot number 193, he will not suffer any irreparable damage if the injunctive order is not issued because he can in the meantime occupy plot number 193.
15. For those reasons, I dismiss the Application dated 11<sup>th</sup> March, 2015 with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 30<sup>TH</sup> DAY OF JUNE, 2017.**

**O.A. ANGOTE**

**JUDGE**