



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MACHAKOS
ELC. CASE NO. 91 OF 2011

FRANCIS NGIGE WAWERU.....PLAINTIFF/RESPONDENT

VERSUS

SAMUEL KALOVOTO SEKE.....1ST DEFENDANT/APPLICANT

WILSON MORRIS WAMBUA.....2ND DEFENDANT/APPLICANT

AND

SIMON WANJEMA MUNDIA & OTHERS.....1ST INTENDED DEFENDANT/RESPONDENT

RULING

1. What is before me is the Application dated 7th March, 2016 in which the 1st Defendant is seeking for the following orders:

a. That a temporary injunction do issue restraining the Plaintiff and the intended Defendants by themselves and/or by their authorized agents, servants, employees and/or any persons acting under his authority from entering, trespassing, subdividing, constructing, interfering and/or in any other manner from dealing with the Defendants/Applicants' possession and occupation of all that parcel of land known as Mavoko Town Block 3/1974 pending the hearing and determination of this suit.

b. That costs of this Application be provided for.

2. The Application is premised on the grounds that the Defendants are the legal and registered owners of land known as Mavoko Town Block 3/1974; that the Plaintiff has trespassed on the suit land and denied the Defendants access to the land and that the Defendants have been denied their right to quiet and peaceful enjoyment of the land.

3. In his Affidavit, the 1st Defendant deponed that him, together with the 2nd Defendant, are the registered proprietors of the suit land.

4. According to the deposition of the 1st Defendant, the Plaintiff and the intended Defendants are causing wanton destruction and waste to the suit land and that the injunctive order should issue.

5. In response, the Plaintiff deponed that the Defendants/Applicants are guilty of inordinate delay in filing

the Application; that the suit land initially belonged to Lukenya Co-operative Limited; that the land was allocated the 1st Defendant together with parcel of land number Mavoko Town Block 3/1974 and that by the Sale agreement of 30th December, 2005, the 1st Defendant sold the parcel of land known as Mavoko Town Block 3/1973 to him.

6. The Plaintiff deponed that there has been confusion as to whether the land sold to him by the 1st Defendant is parcel of land number 1973 or 1974; that a company known as Waswa Company Limited is in occupation of plot number 1973 and that he has commenced an action in ELC No. 172 of 2010 to protect plot number 1974.

7. According to the Plaintiff, he shall be seeking for the consolidation of the two suits.

8. The Plaintiff finally deponed that he is a “*land dealer*” and that he has contracted to sell several portions of the suit land to the intended Defendants.

9. The 1st Defendant’s advocate filed submissions which I have considered. I have also considered the filed authorities.

10. In the Plaintiff filed in this court on 11th April, 2011, the Plaintiff averred that by way of a sale agreement dated 30th December, 2005, he entered into an agreement with the 1st Defendant/Applicant, with the authority of the 2nd Defendant, for the sale of parcel of land known as Mavoko Town Block 3/1973. According to the averment in the Plaintiff, the said property changed to Mavoko Town Block 3/1974.

11. It is the Plaintiff’s case that the 1st Defendant/Applicant has declined to transfer plot number 1974 to him.

12. In their Defence, the Defendants’ denied ever selling to the Plaintiff parcel of land known as Mavoko Town Block 3/1974.

13. The 1st Defendant is now asking for an injunctive order in respect of parcel of land number 3/1974 pending the hearing and determination of the suit.

14. According to the certificate of official search annexed on the Defendants’/Applicants’ Affidavit, parcel of land known as Mavoko Town Block 3/1974 is still registered in the names of the Defendants.

15. Although the Agreement entered into between the Plaintiff and the 1st Defendant shows that the Plaintiff purchased plot number 1973 measuring 16.01 Ha (*just like plot number 1974*), it would appear that there is confusion in respect to the plot that the Defendants sold to the Plaintiff.

16. I say so because in their letter of 17th March, 2011 and addressed to the District Land Registrar, Machakos, the officials of Lukenya Ranching & Farming Co-operative Society stated that Plot No. 1974 should be registered in favour of the Defendants because the “*two had been allocated Plot No. 1973 and received title but on the ground the same plot number 1973 had been sub-divided and sold by the owner of Plot No. 1974 -Mr. Elijah Kalovoto to Waswa*”.

17. The officials of the Society suggested that the Defendants should surrender the title to Plot No. 1973 and instead should retain Plot No. 1974.

18. From the said letter, it would appear that Plot No. 1973 did not exist as at the time the Defendants purported to sell it to the Plaintiff. If that is so, then the Plaintiff would be entitled to Plot No. 1974.

19. Considering that the Defendants have produced the search showing that they are the registered proprietors of Plot No. 1974, and in view of the fact that there is no document to show that they ever

transferred to the Plaintiff Plot No. 1973, the most appropriate order to give in the interim is to injunct both the Plaintiff and the Defendants from dealing with Plot No. 1974 pending the hearing and determination of the suit.

20. For those reasons, I make the following orders:

a. Both the Plaintiff and the Defendants are hereby restrained from sub-dividing, constructing, interfering and/or in any manner dealing with parcel of land known as Mavoko Town Block 3/1974 pending the hearing and determination of the suit.

b. The prevailing status quo in terms of occupation to be maintained pending the hearing and determination of the suit.

c. Each party to bear his own costs.

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

O.A. ANGOTE

JUDGE