



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 129 OF 2016**

**ABDIRAHMAN ADAN MOHAMED .....1<sup>ST</sup> PLAINTIFF**

**ABDIKADIR ARAB MOHAMUD.....2<sup>ND</sup> PLAINTIFF**

**ABDI SALAAN YUSUF.....3<sup>RD</sup> PLAINTIFF**

**ABDI MOHAMED .....4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**JEREMIAH MULU .....1<sup>ST</sup> DEFENDANT**

**FRANCIS GITAU NWANGI .....2<sup>ND</sup> DEFENDANT**

**ANN WANJIKU MWANGI .....3<sup>RD</sup> DEFENDANT**

**DOMINIC NYAMBANE .....4<sup>TH</sup> DEFENDANT**

**JORAM WANYAMA.....5<sup>TH</sup> DEFENDANT**

**DANIEL SHAURI .....6<sup>TH</sup> DEFENDANT**

**THE NATIONAL LAND COMMISSION .....7<sup>TH</sup> DEFENDANT**

**RULING**

1. In the amended Notice of Motion dated 28<sup>th</sup> November, 2016, the Plaintiff is seeking for the following reliefs:

*a. That this Honourable Court be pleased to issue a temporary/interim order of injunction restraining the Defendants by himself themselves, his their respective servants, workmen, agents, officers or otherwise howsoever from dealing with by purporting to sell, transfer, charge, mortgage or entering, accessing, remaining onto, getting ingress into or trespassing into the Plaintiffs' land namely Land Reference Number 27793 from destroying or otherwise injuring the boundaries thereof, or from erecting, continuing to erect or causing to be erected any structure thereon whether temporary or permanent in nature or from in any way interfering with the Plaintiffs' peaceful possession and enjoyment of the said Land Reference Number 27793 or any part thereof pending the hearing and determination of this suit.*

***b. That the Officer Commanding Police Division (OCPD) – Athi River Police station be served with the temporary/interim order of injunction given herein by this Honourable Court with a view to ensure due compliance.***

***c. That this Honourable Court be pleased to give an order for preservation of the status quo on the suit property obtaining as at the date of the commencement of these proceedings and/or any other or further or better relief that this Honourable Court may deem necessary, fit and just and convenient to grant in the circumstance for the ends of justice.***

***d. That the costs of this Application be provided for.***

2. In his Affidavit, the 1<sup>st</sup> Plaintiff has deponed that on 8<sup>th</sup> December, 2008, he entered into an Agreement with Samwel Kimondo Theuri for the purchase of the land known as L.R No. 27793; that the suit land was transferred to the Plaintiffs as tenants in common in equal shares and that on 1<sup>st</sup> April, 2010, the Registrar of Titles, Nairobi, issued a Gazette Notice No. 3454 purporting to revoke the said Title document.

3. According to the Plaintiffs, the Gazette Notice purporting to revoke their title was quashed by the court; that they have transferred the suit land and that the Defendants could not have been legally allocated the suit land.

4. It is the Plaintiffs' case that the 1<sup>st</sup> Defendant rushed to put up the structure on the suit land after the commencement of these proceedings and in contravention of a court order.

5. The Plaintiffs denied the 1<sup>st</sup> Defendant's assertion that he has lived on the land for 21 years and that after their title was revoked, the National Housing Corporation started developing the suit property and that the court injected the National Housing Corporation from developing the suit land on 25<sup>th</sup> January, 2011.

6. In the Supplementary Affidavit, the 3<sup>rd</sup> Plaintiff deponed that the 1<sup>st</sup> Defendant, in disobedience of an order of the court, went ahead with construction activities on the suit land; that the 1<sup>st</sup> Defendant is now occupying the suit land and that the 1<sup>st</sup> Defendant is in contempt of the order of the court.

7. In his response, the 1<sup>st</sup> Defendant deponed that in 1995, the then Minister of Lands and Settlement through the Commissioner of Lands, allocated the suit land to the members of public; that the land was sub-divided into several portions of one acre and that after balloting for the land, he was issued with a letter of allotment on 23<sup>rd</sup> February, 1995.

8. According to the 1<sup>st</sup> Defendant, he paid the requisite sums as per the letter of allotment; that he then appointed a surveyor to pursue the Title Deed on his behalf and that on 11<sup>th</sup> August, 2014, he paid the requisite rent and started fencing the land.

9. The Plaintiffs' case is that they are the registered proprietors of land known as L.R NO. 27793 measuring 4.499Ha.

10. The 1<sup>st</sup> Plaintiff has annexed on his Affidavit the grant that was issued and registered in favour of Joseph Mwanzia Musyoki and Habiba Bokayo Wavio who in turn sold the land to Samuel Kimondo Theuri. The said Samuel Kimondo Theuri is said to have transferred the land to the Plaintiffs on 11<sup>th</sup> December, 2008.

11. The Plaintiffs have annexed on the Sale agreement Gazette Notice No. 3454 showing that the title to the suit land was revoked by the Registrar of Titles. The said Gazette Notice was quashed by the court on 22<sup>nd</sup> October, 2013.

12. The Defendants on the other hand claim that the land was allocated to them way back in 1995 and that each of the Defendants was allocated one acre.

13. The 1<sup>st</sup> Defendant has annexed on his Affidavit the sub-division scheme, the copy of the letter of allotment and the receipts showing the payments they made to the Commissioner of Lands.

14. Considering that the Plaintiffs are in possession of a title document and the Defendants are in possession of letters of allotment, this court cannot at this stage determine who as between the Plaintiffs and the Defendants are the lawful owners of the suit land.

15. Indeed, the Plaintiffs, notwithstanding the fact that they are in possession of the title document, will have to demonstrate how the said land was allocated to the initially allottee before the same was transferred to them.

16. However, for now, the *status quo* obtaining should be maintained pending the hearing of the suit.

17. For those reasons, the court makes the following specific orders:

*a. The prevailing status quo on the date of this Ruling to be maintained, meaning that there should be no further developments of whatever nature or description on the suit land, including the dumping or depositing of any building materials by either the Plaintiffs or the Defendants pending the hearing and determination of the suit.*

*b. Each party to bear his own costs.*

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 16<sup>TH</sup> DAY OF JUNE, 2017.**

**O. A. ANGOTE**

**JUDGE**