



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 210 OF 2014

BENSON NZIOKA KASYUMA.....PLAINTIFF

VERSUS

ANNA MWELU.....DEFENDANT

RULING

1. In the Notice of Motion dated 10th December, 2014, the Plaintiff is seeking for the following orders:
 - a. Pending the hearing and determination of the Application herein and the suit, the Honourable Court be pleased to issue an injunction stopping [all] any transfer or dealings whatsoever in Ndalani/Ndalani/Block 1/1138.*
 - b. Pending the hearing and final determination of the suit herein, the Honourable Court be pleased to issue a temporary injunction against the Defendant, his agents, servants and/or his representatives from entering, surveying, subdividing, taking possession and/or in any other manner interfering with Plaintiff's land No. Ndalani/Ndalani Block 1/475.*
 - c. The orders herein to be enforced by the OCS Kithimani Police Station.*
 - d. Costs be provided for.*
2. The Application is supported by the Affidavit of the Plaintiff who has deponed that he is the legal and absolute owner of land parcel number Ndalani/Ndalani Block 1/175; that the said land was allocated to his father in the year 1975 by the virtue of being a member of Matungulu Yatta Ranching Co. Ltd consisting of six (6) blocks and that in 1982, his father gave him one of the block being the suit land.
3. According to the Plaintiff, he has been utilizing the land since the year 1982 and that through fraud, the Defendant obtained a Title Deed for parcel of land number Ndalani/Ndalani Block 1/1138 which was curved from his land.
4. In response, the Defendant deponed that she is the absolute registered proprietor of parcel of land known as Ndalani/Ndalani Block 1/1138 measuring approximately 2.660Ha; that previously, her sister was the registered proprietor of the land and that Matungulu Yatta Ranching Company Limited has confirmed in writing that the land belongs to her.
5. According to the Defendant, her late sister was in occupation of the land since the year 1990 until the year 2006 when she died and that she has been in occupation of the land since then.
6. The Defendant further deponed that parcel of land known as Ndalani/Ndalani Block 1/1138 has never

been part of parcel of land number 175; that the two parcels of land are distinct; that she has no claim over parcel of land number 175 and that the Plaintiff does not have any works or developments on her land.

7. The Defendant's advocate filed written submissions and authorities which I have considered.

8. The Plaintiff is seeking for injunctive orders restraining the Defendant from dealing with parcels of land known as Ndalani/Ndalani Block 1/175 and 1138.

9. According to the Plaintiff, his late father was allocated six (6) blocks of land measuring 8 acres by Matungulu Yatta Ranching Co. Ltd and that in the year 1982, his father gave him parcel of land known as plot 175 measuring 8 acres.

10. The Plaintiff has annexed on his Affidavit the letter dated 23rd July, 2014 signed by the officials of Matungulu Yatta Ranching Co. Ltd.

11. In the said letter, the company confirmed that "*it was agreed that the title deed be issued to*" the Plaintiff. The Titled Deed that the company agreed to issue to the Plaintiff is in respect to plot 175.

12. It would appear that the same officials who had agreed that plot number 175 belongs to the Plaintiff also confirmed vide their letter of 8th October, 2014 that plot number Ndalani/Ndalani/1138A belongs to the Defendant.

13. Although the Plaintiff has claimed that plot number 1138 was carved out of plot number 175, there is no evidence that indeed plot number 1138 is one of the sub-divisions of plot number 175.

14. Considering that the Plaintiff has not laid any evidence before the court to show the connection between the two plots, and in view of the fact that the Defendant's sister was issued with a Title Deed for plot 1138 in the year 1996 before the same was transmitted to the Defendant in the year 2013, I find and hold that the Plaintiff has not established a prima facie case with chances of success.

15. For those reasons, I dismiss the Application dated 10th December, 2014 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 16TH DAY OF JUNE, 2017.

O.A. ANGOTE

JUDGE