



**REPUBLIC OF KENYA**  
**ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. SUIT NO. 62 OF 2016**

**BONIFACE WAMBUA KIOKO.....PLAINTIFF**

**VERSUS**

**JULIUS NDETI KIMILU.....1<sup>ST</sup> DEFENDANT**

**JOSEPH MUTHIANI *alias* MWONGELA.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. In his Application dated 27<sup>th</sup> July, 2016, the Plaintiff is seeking for injunctive orders in the following terms:

*a) That the defendants whether by themselves or through their servants, agents and/or employees or any other person whomsoever claiming under them be restrained from trespassing into a plot measuring 18ft by 70ft situate at Kiunduani Market or from doing any other prejudicial act thereon pending the hearing and determination of this application and the main suit herein.*

*b) That the cost of this Application be in the cause.*

2. The Application is premised on the grounds that the Plaintiff is the lawful owner of the isolated plot measuring 18ft by 70ft situated at Kiunduani Market; that the Defendants have trespassed on the said land and started assembling building materials and that the Plaintiff has a prima facie case with chances of success.

3. According to the Plaintiff's Affidavit, he bought the suit land on 24<sup>th</sup> September, 2015 from the 1<sup>st</sup> Defendant; that he was granted vacant possession of the land and that the 2<sup>nd</sup> Defendant trespassed on the land claiming that the land was his.

4. In response, the 2<sup>nd</sup> Defendant deponed that by an agreement dated 27<sup>th</sup> December, 2014, he purchased the disputed plot measuring 20 x 80ft; that he obtained vacant possession of the plot and that he cleared the plot and began developing it.

5. According to the 2<sup>nd</sup> Defendant he enquired from the Kiunduani Market Committee about the ownership of the suit land and confirmed that it belonged to Shadrack Muli; that he was introduced to the said Shadrack Muli by the 1<sup>st</sup> Defendant and that the 1<sup>st</sup> Defendant confirmed to him that he has no interest in the suit land.

6. The Plaintiff's and the 2<sup>nd</sup> Defendant's advocate filed brief submissions which I have considered. I have also considered the filed authorities.
7. Both the Plaintiff and the 2<sup>nd</sup> Defendant claim to have bought the suit land.
8. The Plaintiff claims to have brought the suit land from the 1<sup>st</sup> Defendant while the 2<sup>nd</sup> Defendant claims that he bought the same property from Shadrack Sila Muli.
9. It would appear that neither the 1<sup>st</sup> Defendant nor Shadrack Sila Muli were registered as the proprietors of the suit land before they purported to sell it.
10. In the absence of documents to show the legal or beneficial owner of the suit land, the most appropriate order to make at this stage is for the status quo to be maintained pending the hearing and determination of the suit.
11. For those reasons, the court makes the following specific orders:

*a. The prevailing status quo to be maintained, meaning that neither the Plaintiff nor the Defendants should alienate, transfer, develop or utilize the suit property in any manner whatsoever until the hearing and determination of the suit.*

*b. Costs to be in the cause.*

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

**O.A. ANGOTE**

**JUDGE**