



REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. SUIT NO. 65 OF 2016

FLORA ITUMBI.....PLAINTIFF/APPLICANT

VERSUS

WILLIAM KIVAI NDAISI.....DEFENDANT/RESPONDENT

RULING

1. In the Application dated 1st September, 2016, the Plaintiff is seeking for the following reliefs:

a) That a temporary injunction be issued to restrain the Defendant by himself, his agents, servants or employees from blocking the Plaintiff and/or his servants from entering land parcel land parcel measuring 11.8acres contained in land known as Mitaboni/Mitaboni/2596, owned by Applicant by virtue of being a buyer thereon pending hearing and determination of this Application and subsequently the main suit.

b) That the costs of this Application be in the cause.

2. In his Supporting Affidavit, the Plaintiff has deponed that between 1986-1989, he entered into written sale agreements with the Defendant; that the Defendant sold to him 11.8 acres of land from his unsurveyed land known as Mitaboni/Mitaboni/2596 and that he settled on the said land in 1989.

3. The Plaintiff has deponed that during the adjudication process, the Defendant misrepresented himself to the officials from the Ministry of lands that he was the owner of the entire parcel of land; that he had himself registered as the owner of the whole land and that he has threatened to evict him from the land.

4. In response, the Defendant deponed that he has never transacted with the Plaintiff as alleged; that the Plaintiff does not reside on the suit land and that he is the registered proprietor of the suit land.

5. According to the Defendant, it is his family which is residing on the suit land and that from the Plaintiff's document, the purchaser of the suit land is one Alice Muya.

6. The Defendant deponed that the alleged agreements do not indicate the acreage that was purchased; that the alleged agreements do not indicate the Plaintiff as the purchaser and that the Plaintiff has never demanded for the transfer of the said 11.8 acres that he purportedly purchased.

7. Both the Plaintiff's and the Defendant's advocate filed their respective submissions which I have considered. I have also considered the filed authorities.

8. The Plaintiff's case is that he entered into several agreements with the Defendant between the year 1986 to 1989; that as at the time they entered into those agreements, the suit land was unsurveyed and that

by the end of the year 1989, he had bought a total of 11.8 acres of the suit land.

9. The Plaintiff has deponed that she has been in possession of the land since 1989 and that she has constructed permanent buildings on the land.

10. The Defendant has denied the Plaintiff's depositions. The Defendant has however admitted that one Alice Muya purchased portions of land from him; that the actual acreage was never ascertained; that the only thing they did was to mark the boundary between the purchaser's portions of land from his and that the purchaser was one Alice Muya and not the Plaintiff.

11. The Plaintiff has attached on her Supporting Affidavit the Affidavit of Pius Mutua, the person who witnessed the signing of the three Agreements between the Defendant and Alice Muya.

12. According to the deposition of Peter Mutua, the boundaries of the land that was purchased by Alice Muya were ascertained in 1989; that those boundaries are intact to date and that the said Alice Muya developed her portion of land by constructing permanent structures.

13. The Agreement annexed on the Plaintiff's Affidavit shows that the Plaintiff entered into a sale agreement with the Defendant on 11th June, 1986 for a parcel of land whose acreage was not indicated. Another Agreement between the parties was made on 30th June, 1986 with the final agreement being made on 4th April, 1989.

14. Although the Defendant has deponed that the land he sold was demarcated in 1989, and that the boundaries were established, he has not produced any evidence to show that the land that the Plaintiff purchased is distinct from the land forming parcel of land known as Mitaboni/Mitaboni/2596 measuring 10.09 Ha (approximately 25.2 acres).

15. In the absence of evidence to show that the land that the Plaintiff purchased is not consumed in plot number 2596, I find and hold that the Plaintiff has established a prima facie case with chances.

16. Whether the disputed portion of land was purchased by the Plaintiff or the said Alice Muya, the Defendant cannot be allowed to retain that which he had already sold. That, in my view would amount to unjust enrichment.

17. In the circumstances, and for the reasons I have given above, I allow the Plaintiff's Application dated 1st September, 2016 as prayed.

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

O.A. ANGOTE

JUDGE