



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. SUIT NO. 160 OF 2016

GEOFFREY KILOSA MULWA.....PLAINTIFF

VERSUS

MUTINDA MUTISYA.....1ST DEFENDANT

THE KATELEMBU ATHIANI MUPUTI FARMING AND RANCHING

CO-OPERATIVE SOCIETY LTD.....2ND DEFENDANT

RULING

1. In the Notice of Motion dated 12th October, 2016, the Plaintiff is seeking for the following orders:

a. That a temporary injunction be issued restraining the 1st Defendant either by himself, agents, employees, proxies and or servants from interfering, trespassing, alienating, wasting, damaging, developing it or howsoever disposing, and or in any way interfering with the quiet use and enjoyment of land parcel No. Athi River/Athi River Block 1/1076 located in Machakos County pending the hearing and determination of this suit.

b. That the cost of this application be provided for.

2. The Application is premised on the grounds that the Plaintiff is the lawful owner of the suit land; that the Plaintiff acquired ownership of the suit land after buying two shares from Ndambuki Ndeva who was the original member of the 2nd Defendant; that after the surveying exercise, each shareholder was involved in the balloting process and that he managed to get plot No. 210 after the said balloting.

3. The Plaintiff deponed that when he visited the suit land in the year 2015, he found the 1st Defendant cultivating the said land and in its Report, the Task Force on verification of the plots rendered its verdict and confirmed that Athi River/Athi River Block 1/1076 (plot number 20) was his.

4. It is the Plaintiff's case that he was subsequently issued with a Title Deed in respect to the suit land.

5. In response, the 1st Respondent deponed that the Plaintiff's Title Deed was procured fraudulently; that Plot number 210 was allocated to Sammy Ndunda who was a member of Katelembo Athiani Muputi Farming and Ranching Co-operative Society Ltd and that he sold the said land to Margaret Njoki Kimani.

6. According to the 1st Defendant he purchased the suit land from Margaret Njoki Kimani vide an agreement dated 13th October, 2010 and that he has since developed the land by constructing permanent

structures on the land.

7. The 1st Defendant deponed that the Plaintiff has all along known about the developments he was putting up on the suit land; that the Plaintiff has fraudulently caused the suit land to be registered in his favour and that he will suffer irreparably if he is evicted from the suit land.

8. The Plaintiff's and the 1st Defendant's advocates filed submissions which I have considered.

9. Both the Plaintiff and the 1st Defendant are claiming to be the owners of a parcel of land known as Athi River/Athi River Block 1/1076.

10. According to the Plaintiff, he was allocated plot number 210 by virtue of being a member of the 2nd Defendant.

11. On the other hand, the 1st Defendant's claim is that plot number 210 was actually allocated to one Sammy Nduda who sold it to one Margaret Njoki Kimani. The said Margaret Njoki then sold the land to the 1st Defendant.

12. Although the Plaintiff was issued with a Title Deed on 27th April, 2016, the 1st Defendant has deponed that it was issued to him fraudulently.

13. In his Supporting Affidavit, the Plaintiff deponed that there were multiple complaints against the 2nd Defendant's officials involving double allocation of land.

14. Considering that the 1st Defendant has annexed documents showing that the officials of the 2nd Defendant had at some particular point confirmed that the suit land was allocated to Sammy Nduda, and in view of the fact that it is the 1st Defendant who has substantially developed the land, the prevailing status quo should be maintained pending the hearing and determination of the suit.

15. I say so because although the Plaintiff is in possession of a Title Deed, the issue of how he acquired the Title Deed will have to be interrogated by the court at trial.

16. An injunctive order at this stage will in effect amount to an eviction of the 1st Defendant from the suit land before the issue of the propriety of the Title Deed held by the Plaintiff is determined.

17. In the circumstances, I dismiss the Plaintiff's Application dated 12th October, 2016 and make the following orders:

a. The status quo prevailing now to be maintained pending the hearing and determination of the suit.

b. The 1st Defendant should not proceed with any further construction of the suit land until the suit is heard and determined.

c. Each party to bear his or her own costs.

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

O. A. ANGOTE

JUDGE