



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

**ELC. CASE NO. 182 OF 2014**

**KENYA INDUSTRIAL ESTATES LIMITED.....PLAINTIFF/APPLICANT**

**VERSUS**

**FELIX MUTUNGA MWALI.....DEFENDANT/RESPONDENT**

**RULING**

1. The Plaintiff's Application dated 19<sup>th</sup> November, 2014 is seeking for the following orders:

*a. That a temporary injunction do issue restraining the Defendant by himself, his agents, servants and or any other persons whomsoever from encroaching upon, trespassing onto, remaining on, developing upon or in any way howsoever interfering with all that plot described as L.R. No. 30010- Kibwezi, situated at Kibwezi, Makueni County pending the hearing and determination of this suit.*

*b. That costs of this Application be borne by the Defendant.*

2. The Application is premised on the grounds that the Plaintiff is the proprietor of L.R. No. 30010 – Kibwezi; that since 1986, the Plaintiff has been in occupation of the suit land; that the Plaintiff has put on the suit land an administration block and industrial premises and that the Plaintiff was issued with a letter of allotment by the National Land Commission on 7<sup>th</sup> January, 2014.

3. It is the Plaintiff's case that over time, the Plaintiff applied and received approvals of the Part Development Plans by the Ministry of Urban Development and Housing and that the Defendant trespassed on the suit land in March, 2014 and uprooted the Plaintiff's concrete posts.

4. In reply, the Defendant deponed that the Plaintiff has never been in exclusive possession and occupation of the suit land; that the Plaintiff built stalls on its land which it sold and that he is the one who was allocated the suit land by the County Council of Makueni in May, 2009 and that all along, he has known the Plaintiff's land to border his land.

5. According to the Defendant, the Part Development Plan (P.D.P) that has been annexed on the Plaintiff's Affidavit was superseded by Part Development Plan number MKN/193/2013/02 which was published in the Kenya Gazette vide Gazette Notice No. 797 and that it is not in the province of the National Land Commission to allocate land unless instructed by the County Government.

6. The advocates filed their respective submissions and authorities which I have considered.

7. The Plaintiff's claim is that since 1986, it has been in exclusive possession of a parcel of land known as

L.R. No. 30010-Kibwezi. The Plaintiff has exhibited several correspondences between itself and the Ministry of Lands dating way back to 1981.

8. The Plaintiff has also exhibited a Part Development Plan that was approved by the Director of Physical Planning and the then Minister for Lands on 17<sup>th</sup> July, 2013.

9. According to the said Part Development Plan, the area that was reserved for Kenya Industrial Estate measures 1.40Ha.

10. According to the Defendant, he was allocated a portion of the land that the Plaintiff is claiming by the then County Council of Makueni in May, 2009, and that he took possession of the said land by fencing it and planting about 300 trees.

11. It is the Defendant's case that the Part Development Plan that the Defendant is relying on was superseded by Part Development Plan No. MKN/193/2013/02.

12. I have perused Part Development Plan No. MKN/193/2013/02 which has not been approved by the Director of Surveys and the Cabinet Secretary.

13. The said Part Development Plan is similar to the Part Development Plan number MKN/193/2009/01 which showed the "*existing site for Kenya Industrial Estate*", the Plaintiff. The only difference between the two Part Development Plans is that the latter Part Development Plan sub-divided the land that had initially been reserved for the Plaintiff into two portions, that is portion (A) for the Plaintiff and portion (B) for "*Business cum residential plot.*"

14. It is not clear to this court on whose authority the land that had been reserved for the Plaintiff in the earlier Part Development Plan was sub-divided into two portions. However, what is clear is that unlike the Part Development Plan that the Defendant is relying on, the Plaintiff's Part Development Plan was duly approved. It is on the basis of the approved Part Development Plan that the National Land Commission, the successor of the Commissioner of Lands, issued to the Plaintiff a letter of allotment.

15. Indeed, from the correspondence annexed in the Plaintiff's Affidavit, the area in question had always been reserved for the Plaintiff since 1981 when Part Development Plan No. MKN/193/81/1 was approved by the then Commissioner of Lands.

16. Considering that the Plaintiff's approved Part development Plans (P.D.P's) were first in time, and in view of the absence of any good reason as to why the land reserved for the Plaintiff was sub-divided into two portions, I find that the Plaintiff has established a *prima facie* case with chances of success.

17. In any event, other than the copies of receipts showing that the Defendant paid for rent to the County Council of Makueni, there is no evidence that indeed the County Council of Makueni allocated the suit land to the Defendant.

18. The Defendant has not exhibited the letter of allotment or the Minutes from the said Council to prove his allegation that the suit land was allocated to him in the year 2009.

19. For those reasons, I allow the Plaintiff's Application dated 19<sup>th</sup> November, 2014 as prayed.

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

**O.A. ANGOTE**

**JUDGE**