



**REPUBLIC OF KENYA**  
**ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ELC. SUIT NO. 219 OF 2016**

**MWANG'A MUTINDA *alias***

**MWANG'A MUTINDA MUNDIA.....PLAINTIFF**

**VERSUS**

**MAWILI NDELEVA.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**FRANCIS MUTUA MWAU.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**KITHOME KIILI.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**NYAMAI MUANGE.....4<sup>TH</sup> DEFENDANT/RESPONDENT**

**MWONGELI MUTHAMA.....5<sup>TH</sup> DEFENDANT/RESPONDENT**

**DAVID MAKOSI.....6<sup>TH</sup> DEFENDANT/RESPONDENT**

**RULING**

1. What is before me is the Plaintiff's Application dated 5<sup>th</sup> December, 2016 seeking for the following orders:

***a) That this Honourable Court be pleased to issue orders of temporary injunction restraining the Defendants/Respondents, their agents or any other persons claiming under them from selling, transferring, encroaching on and/or trespassing and/or interfering with the Plaintiff's/Applicant's use, enjoyment and possession of the property being land known as title number Nzau/Kalamba/418 pending the hearing and determination of the main suit.***

***b) An order of temporary injunction do issue against the Defendants/Respondents, their agents and/or any other persons claiming under them restraining them from selling, alienating and/or disposing off and/or in any way interfering with land Parcel No. Nzau/Kalamba/418 pending hearing and determination of the main suit.***

2. The Application is based on the grounds that the Plaintiff legally acquired parcel of land known as Nzau/Kalamba/418; that the Defendants have trespassed on the said land; that the Defendants have threatened to sub-divide the said land and that unless the suit land is preserved, the suit herein shall be rendered nugatory.

3. In response, the 1<sup>st</sup> Defendant deponed that they have been on the suit land since the 1950's; that they have developed the suit land by putting up shops and that they have occupied the said land peacefully since then.

4. In the Further Affidavit, the Plaintiff deponed that there is no proof of how the Defendants came to own the suit land; that the Defendants have not had a peaceful possession of the suit land and that the injunctive orders should issue.

5. The Plaintiff's advocate submitted that the Applicant has demonstrated that he is the registered proprietor of the suit land; that the Applicant has had the ownership of the land since 1976 and that pursuant to the provisions for sections 24, 25 and 26 of the Land Registration Act, he is entitled to the land.

6. The Defendants' counsel submitted that the Applicant has not demonstrated how he will be prejudiced if the injunctive orders are not issued; that an injunctive order should not operate as an eviction order and that the Defendants have occupied the suit land since the 1950's.

7. The Plaintiff is claiming the suit land on the basis of the Title Deed that was issued to him on 3<sup>rd</sup> August, 2016.

8. From the Certificate of Official Search, it would appear that the Plaintiff was registered as the proprietor of the suit land on 8<sup>th</sup> July, 1976.

9. The Plaintiff has not denied that indeed the suit property has shops which are permanent in nature.

10. Considering that the issue of how the Defendants entered the suit property will have to be ascertained at trial, and in view of the fact that the Plaintiff has not explained to the court how or who constructed the shops that are on the suit land, the most appropriate order to make in the circumstances of this case is for the maintenance of the *status quo*.

11. Indeed, given that it is the Plaintiff that is in possession of the Title Deed, it is unlikely that the Defendants will sub-divide the suit land or alienate it.

12. For those reasons, the court makes the following specific orders:

***a) The status quo prevailing as at the date of this Ruling to be maintained pending the hearing and determination of the suit.***

***b) The costs of the Application to be in the cause.***

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

**O. A. ANGOTE**

**JUDGE**