



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 191 OF 2016

**CHRISTOPHER NDOLO MBUTA1ST
PLAINTIFF**

**ANNAH NDOLO MBUTA2ND
PLAINTIFF**

VERSUS

**JACKSON MUTUA KAVILA.....
DEFENDANT**

**REUBEN MBUTA NDOLO.....2ND
DEFENDANT**

**ESTHER WANZA MBUTA (ADMINISTRATOR OF THE ESTATE OF ALICE NDUNGE).....3RD
DEFENDANT**

**LAND ADJUDICATION AND SETTLEMENT OFFICE-MAKUENI
COUNTY4TH DEFENDANT**

**THE COUNTY LAND REGISTRAR, MAKUENI5TH
DEFENDANT**

RULING

1. In the Notice of Motion dated 11th April, 2016, the Plaintiff is seeking for the following orders:

a. That court be pleased to grant an injunction restraining the 1st Defendant with the assistance of the 2nd and 3rd Defendants whether by himself, his agents and/or his servants from dealing, interfering, alienating, wasting, damaging or otherwise disposing of all those parcels of land known as Land Parcel No. 912, 1160, 1902 and 2916 located within Mang’elele Settlement Scheme, Kibwezi District within Makueni County pending hearing and determination of this suit.

b. That any illegal and unlawful transaction perpetrated by the 1st Defendant with the assistance of the 2nd, 3rd, 4th and 5th Defendant in all those parcels of land known as Land Parcel No. 912, 1160, 1902 and 2916 located within Mang’elele Settlement Scheme, Kibwezi District within Makueni County be stayed pending the hearing and determination of this suit.

c. This Honourable Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.

d. The Defendants bear the costs of this Application.

2. The Application is premised on the grounds that the 1st Plaintiff is the legal owner of parcel number 912 and 1160; that the 2nd Plaintiff is the legal owner of parcel number 1902 and 2916 which she co-owned with Alice Ndunge Ndolo Mbuta (*deceased*) and that they have never sold the suit land to the 1st Defendant or at all.

3. The 1st Plaintiff deponed that from the Register of the 4th and 5th Defendants, parcel numbers 912 and 1160 were owned by him and that any alleged transactions in respect to the two parcels of land are fraudulent, null and void.

4. The 2nd Plaintiff deponed that she has never sold parcels numbers 1902 and 2916 to the 2nd Defendant and the 3rd Defendant; that from the register of the 4th and 5th Defendants, parcel numbers 1902 and 2916 were owned by her and the late Alice Ndunge Mbuta in equal shares and that the alleged transaction in respect to the two parcels of land are fraudulent.

5. In response to the Application, the 1st Defendant deponed that the suit properties are his and that he has exclusively developed the suit parcels of land.

6. Both the Plaintiffs' and the Defendants' advocates filed brief submissions which I have considered.

7. According to the letter dated 17th August, 2011 by the District Land Adjudication Settlement Officer, Kibwezi, the suit properties are registered in favour of the 1st Defendant.

8. The Plaintiffs are claiming that the suit properties were originally registered in their favour, together with their other siblings, the 2nd and 3rd Respondents.

9. From the handwritten record of the Demarcation officer, parcels of land numbers 912 and 1160 were registered in the name of the 1st Plaintiff while parcels numbers 1902 and 2916 were registered in the name of Ndunge Mbuta, the 2nd Plaintiff and the 2nd Defendant.

10. Although the 1st Defendant has deponed that he purchased the said parcels of land, he has not annexed any agreement to that effect.

11. The 1st Defendant has also not stated the amount of money he paid for the suit land, if at all, and the mode of the said payment.

12. Considering that the Plaintiffs were the ones who were identified by the Land Adjudicating and Settlement Office to have been the initial owners of the suit land, and in the absence of documentary evidence to show how the 1st Defendant acquired the same, I find that the Plaintiffs have established a prima facie case with chances of success.

13. In the circumstances, I allow the Application dated 11th April, 2016 in terms of prayers numbers 4 and 8.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 29TH DAY OF SEPTEMBER, 2017.

O.A. ANGOTE

JUDGE