



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 42 OF 2017

DANIEL KYULI & 6999 OWNERS OF A SUB-DIVISION IN MAVOKO

TOWN BLOCK 12 .....PLAINTIFFS

VERSUS

FELIX MUTHEMBA

JOSEPH NJUGUNA (*BEING SUED ON THEIR OWN BEHALF AND*

*AS OFFICIALS OF BALOZZY WELFARE GROUP*)...DEFENDANTS

RULING

1. The Notice of Motion dated 28<sup>th</sup> November, 2016 filed by the Plaintiffs is seeking for these orders:

*a. That pending hearing and determination of this Application the Respondents members of Balozzy Welfare Group their workers, relatives, employees or any person acting on their behalf be restrained from encroaching, constructing, trespassing, sub-dividing, leasing, selling, grazing, destroying or dealing in any manner whatsoever with land reference numbers Mavoko Town/Block 12/ 784/ 755/ 383/ 623/ 539/ 695/ 779/739/786/288/832/ 792/ 779/ 697/ 268/ 832/ 868/ 6711/6769/6772/6773 / 6774/ 6776/ 6777/ 6778/ 6781/ 6783/6785/6786/6787 /6788 /6789/ 6790/ 6791/ 6795/ 6796/6797/6805/6802/6803/6804/6799/6801/467/ 6798 and any other parcel of land registered under Mavoko Town Block 12.*

**b. That this Honourable Court be pleased to grant temporary orders in terms of prayer (2) above.**

*c. That this Honourable Court be pleased to grant vacant possession/eviction orders against the Respondents, their workers, relatives, employers or any other person encroaching on the Applicants' parcels of land.*

*d. That these orders be supervised by the officer commanding Mlolongo Police Station for implementing forthwith.*

*e. That costs of this Application be provided for.*

2. The 1<sup>st</sup> Plaintiff, on behalf of the other Plaintiffs, deponed that L.R. No. 8529/1 was previously registered in favour to M/S Drumvale Farmers Co-operative Society Limited; that the said land was consolidated with L.R. Nos. 7283/1 and 3673 to form parcel of land known as Mavoko Town Block 12

which was subsequently sub-divided and allocated to members of Drumvale Limited.

3. The 1<sup>st</sup> Plaintiff has deponed that the Respondents have trespassed on the suit land and built temporary structures.

4. On behalf of Balozzy Welfare Group, the 1<sup>st</sup> Defendant deponed that the Defendants have not encroached on parcel of land known as Mavoko Town Block 12; that they have settled on the disputed land for the past twenty (20) years and that Balozzy Welfare Group Companies has over 2000 members who live on the land.

5. It is the Defendants' case that they have adversely been in possession of the suit land continuously for more than twelve (12) years after the said possession and that pursuant to Article 43(b) of the Constitution, every person has a right to accessible and adequate housing.

6. The Plaintiffs' and the Defendants' advocates filed their respective submissions and authorities which I have considered.

7. The Plaintiffs' case is that sometimes in the year 1990, the Ministry of Lands approved a sub-division and amalgamated L.R. Nos. 8529/1, 7283/1 and 3673 measuring 452Ha, 662Ha and 898Ha respectively thus creating parcel of land known as Mavoko Town Block 12.

8. The Plaintiffs have deponed that the said land was then sub-divided into several portions, which portions were allocated to its members. The Plaintiffs have annexed the copies of the Title Deeds that were issued to its members between 1997 and 2016.

9. It is not cleared to this court the circumstances under which L.R. No. 8529/1, 7283/1 and 3673 we amalgamated to create Mavoko Town Block 12.

10. The Plaintiffs have not also explained to this court how the amalgamated parcels of land were later sub-divided, and on whose authority the said sub-division was done. Indeed, the approved sub-division scheme of the said land has not been exhibited by the Plaintiffs.

11. Considering that the Defendants claim is that they have been on the suit land for the past twenty (20) years, it is only proper and just for this court to grant both parties an opportunity to state how they acquired the suit land. That can only happen during trial.

12. It is because of the uncertainty in my mind on how the Plaintiffs acquired the Title Deeds in respect of the suit land and the fact that the Defendants are already in occupation of the same land that I dismiss the Application dated 28<sup>th</sup> November, 2016 and make the following orders:

***a. The status quo prevailing now in respect to parcel of land known as Mavoko Town/Block 12/ 784/ 755/ 383/ 623/ 539/ 695/ 779/739/786/288/832/ 792/ 779/ 697/ 268/ 832/ 868/ 6711/6769/6772/6773 / 6774/ 6776/ 6777/ 6778/ 6781/ 6783/6785/6786/6787 /6788 /6789/ 6790/ 6791/ 6795/ 6796/6797/6805/6802/6803/6804/6799/6801/467/ 6798 be maintained pending the hearing and determination of the suit.***

***b. Each party to bear his/its own costs.***

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2017.**

**O.A. ANGOTE**

**JUDGE**