



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 143 OF 2016

DANSON KITAVI MWANIA.....1ST PLAINTIFF

PETER KASYOKA MUINDI.....2ND PLAINTIFF

VERSUS

DANIEL KIMUYU MICHAEL.....1ST DEFENDANT

MUSYOKA MICHAEL.....2ND DEFENDANT

RULING

1. In the Application dated 30th September, 2016, the Plaintiffs are seeking for the following orders:

a. That the Defendants be barred from transferring all or any part of land parcel Mavoko Town Block 3/2710 pending the hearing and determination of this suit.

b. That the Defendants be restricted from interfering with developments erected in the said parcel of land by the Plaintiffs pending the hearing of this suit.

c. That the costs of this Application be in the cause.

2. The Application is premised on the grounds that the Plaintiffs have an interest in parcel of land known as Mavoko Town Block 3/2710; that the Plaintiffs are apprehensive that the Defendants will transfer the suit land and that the injunction should issue.

3. In response, the 2nd Defendant deponed that the Application has been overtaken by events because the land was transferred way back in August, 2016; that the agreements that the Plaintiffs are relying on in this matter were forged and that the Plaintiffs are not in possession of the suit land as alleged.

4. It is the Defendants' case that their father sold the suit land to Truelands Holding Limited on 27th April, 2010 and that any agreements purportedly entered into between the Plaintiffs and their late father are unenforceable and void for non-compliance with Section 8(1) of the Land Control Act.

5. The Defendants finally deponed that the suit is time barred; that the suit land has already been sold and that the Application should be dismissed.

6. In the Further Affidavit, the Plaintiffs deponed that the suit land is still registered in favour of the late Mike Daniel Kimuyu; that the Plaintiffs had entered into Sale Agreements with the late Kimuyu and that

they have been living on the suit land.

7. The Plaintiffs' and Defendants' counsels filed brief submissions which I have considered.

8. The Plaintiffs are seeking for injunctive orders on the ground that they have an interest in the suit land.

9. The evidence of their interest in the suit land has not been annexed on either the Supporting Affidavit or Further Affidavit as an annexure.

10. In the absence of the alleged Sale Agreements that were entered into between the Plaintiffs and the Defendants' father, this court is unable to make a finding at this stage as to the sufficiency of the Plaintiffs' interest in the land.

11. Having not annexed copies of the Sale Agreement (s) or the consent of the Land Control Board allowing the alleged sale, I find and hold that the Plaintiffs have not established a prima facie case with chances of success.

12. For those reasons, I dismiss the Application dated 30th September, 2016 with costs.

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

O. A. ANGOTE

JUDGE