



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 45 OF 2017

PROF. JUSTIN IRINA.....PLAINTIFF

VERSUS

JONATHAN MUTISYA MUINDE.....1ST DEFENDANT

MUTHUI MALOMBE.....2ND DEFENDANT

SAMMY MUTUA3RD DEFENDANT

ALEX KYALO MUTEMU4TH DEFENDANT

AMOS MUTINDA KILONZO.....5TH DEFENDANT

RULING

1. What is before me is the Plaintiff's Application dated 31st January, 2014. In the Application, the Plaintiff is seeking for these orders:

a. That this Honourable Court be pleased to grant an interim injunction restraining the 1st, 2nd, 3rd, 4th and 5th Respondents by themselves, their agents, representatives, employees, and or any other trespassers or persons claiming under them or under a similar claim from entering upon, trespassing, fencing, disposing off, alienating, encumbering, charging, developing, interfering with, transferring or in any other manner dealing with the suit property being L.R. No. 20872.

b. That the costs and incidental in this Application be in the cause.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that he is the registered proprietor of L.R. No. 20872 (*the suit land*); that he has been in possession of the said land since the year 1995; that a Task Force was established by the Government to inquire into the allocation of land in Mavoko area and that after hearing him, the Task Force agreed that the suit land was not public land or land reserved for public purpose.

3. The Plaintiff has deponed that in July, 2010, the 5th Defendant trespassed on the suit land; that the Defendants again trespassed on the suit land in March, 2011 and destroyed the fence and that the Defendants were charged in Mavoko Criminal Case No. 934 of 2012 for the offence of forcible detainer.

4. It is the Plaintiff's case that the Defendants are land grabbers who have purported to excise and sub-divide the suit land and sell it to the members of public and that an order of injunction should issue.

5. In his Affidavit, the 5th Defendant denied that he trespassed on the suit land; that the Plaintiff misled the police into arresting and charging him and that the Plaintiff is acting under some illusions because he has never found him on the property that he claims to be his.

6. The 2nd Defendant, on behalf of the other Defendants, deponed that he is a member of Mlolongo East Settlement Scheme squatting on a public utility land within Mulinge Scheme measuring approximately 73.5Ha; that the members of Mlolongo East Settlement Scheme are about 1,200 and that those members were allowed to squat on the said public land.

7. The 2nd Defendant deponed that the Mulinge Scheme has a Physical Plan from the Ministry of Lands; that the Plaintiff's land being L.R. No. 20872 is not bordering the public utility and that the Defendants and other members of Mlolongo East Settlement Scheme have been on the public utility land since 1995.

8. According to the Defendants, the Leasehold title for L.R. No. 20872 is a forgery because a private person cannot get a Leasehold title on a public utility land unless there is change of user.

9. The Parties filed their respective submissions and authorities which I have considered.

10. The Plaintiff has produced in evidence Grant number 68186 for L.R. No. 20872 measuring 3.429Ha. The said Grant was registered in favour of the Plaintiff on 17th January, 1996.

11. The Defendants' case is that what they are occupying is land that is designated as public land.

12. The Defendants produced in evidence a Part Development Plan which was approved on 11th April, 1994 showing the 73.5Ha designated as public land.

13. It is not clear to this court if the Plaintiff's land was carved out of the land designated as public land in the said Part Development Plan.

14. If indeed the suit land was created from the land which was initially designated as public land, and if the Defendants have always occupied the said land, then the most appropriate order is for the parties to maintain the prevailing the *status quo*.

15. It is only after the court has received evidence of how the suit property was created, viz-a-viz the Defendants' interest in what they have referred to as public land that this court can make a decision on the person that is entitled to the said land.

16. I say so because the mere fact that the Plaintiff is in possession of the grant is not conclusive that the said grant was obtained lawfully. How the grant was acquired has to be interrogated by the court before appropriate orders can be made.

17. For those reasons, I make the following orders:

a. The prevailing status quo to be maintained pending the hearing and determination of the suit, meaning that the Defendants should continue occupying the parcels of land that they are already in occupation but should not put up any other structures.

b. Each party to bear his own costs.

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

O. A. ANGOTE

JUDGE