



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 107 OF 2015

KAVINI MULINGE.....PLAINTIFF

VERSUS

KIMEU KYULE1ST DEFENDANT

FLORENCE MWANGANGI2ND DEFENDANT

JULIUS MBINGO MWANGANGI3RD DEFENDANT

MUSEI MWANGANGI4TH DEFENDANT

BENJAMIN MBITHI5TH DEFENDANT

RULING

1. In the Application dated 1st April, 2015, the Plaintiff is seeking for the following orders:

a. An order be issued against the Defendants prohibiting the Defendants and/or their agents and/or servant and/or employees and/or representatives from dealing in any manner with the suit property namely, Plot No. 12-211 Muka Mukuu F. Co-operative Society Ltd Machakos County pending the hearing and determination of this suit.

b. An injunction be issued directing the Defendant and/or their agents and/or servants and/or employees and/or representatives to vacate the suit property and to hand over immediate possession of the same to the Plaintiff.

c. The Officer in charge of Donyo-Sabuk Police Station be directed to assist the Plaintiff in ensuring that the order referred in 3 above is carried out peacefully.

d. Directions be given for hearing of this Application on a priority basis and then to proceed to hearing on day to day basis.

e. Such further or other orders as are just in the circumstances.

f. That the cost of this Application be in the course.

2. In his Affidavit, the Plaintiff has deponed that he bought plot number 12-211 (*the suit land*) from Muka Mukuu F. Co-operative Society Ltd more than thirty six (36) years ago and that he has been living on the said land since then.

3. Plaintiff deponed that on or about August, 2014, the Defendants trespassed on the suit land and put up structures; that Muka Mukuu F. Co-operative Society Limited (*the Society*) directed the Defendants to vacate the suit land and that the Defendants have taken the advantage of the fact that she has been a widow for the past forty (40) years.

4. In response, the 4th Defendant deponed that the Plaintiff sold some portions of the suit land to people, including himself; that he bought a portion of the suit land from the Plaintiff for Kshs. 17,000 and that he has not trespassed on the suit land.

5. The 2nd Defendant deponed that he purchased the suit land from the Plaintiff for Kshs. 65,000; that he paid a deposit of Kshs. 27,000 and paid the balance in installments and that it was the Plaintiff's clan members who stopped her from selling the suit land further.

6. On the other hand, the 3rd Defendant deponed that he purchased a portion of the suit land from the Plaintiff on 6th January, 2000; that he had a meeting with the area chief and that Plaintiff whereat they agreed that the Plaintiff was to transfer to him the portion of land that he had purchased and that he has since purchased two more portions of land from the Plaintiff.

7. The 1st Defendant deponed that he bought the suit from the Plaintiff on 2nd June, 2003; that the Plaintiff with her two sons sold to him the suit land and that the said sale was reduced into writing.

8. The parties appeared before me on 16th May, 2017 and made oral submissions.

9. In their oral submissions, the parties reiterated the depositions in their Affidavits which I have summarized above.

10. It is not in dispute that the Plaintiff is the owner of Plot No. 12-211.

11. Although the Plaintiff has deponed that the Defendants have invaded the suit land and constructed structures thereon, the Defendants have produced copies of the Sale Agreements showing that they purchased portions of the suit land from the Plaintiff.

12. Having admitted that the Defendants have already put up structures on a portion of the suit land, and in view of the exhibited Sale Agreements, it will be unjust, and this stage, to order for the demolition of the Defendants' structures before hearing the matter.

13. I say so because in the event that the Defendants prove that they indeed lawfully purchased the suit land from the Plaintiff, then the Plaintiff will be compelled to transfer the portions of land the Defendants bought from her.

14. However, whether the said Sale Agreements are lawful or not can only be determined after the hearing of the matter.

15. For those reasons, I disallow the Application dated 1st April, 2015 and make the following orders:

a. The prevailing status quo to be maintained pending the hearing and determination of the suit.

b. Each party to bear his/her own costs.

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

O. A. ANGOTE

JUDGE