



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 192 OF 2016

MURANDI KABURUNYA.....PLAINTIFF

VERSUS

GITONGA MAKINDI1ST DEFENDANT

MARIGH'U KAMUNYU2ND DEFENDANT

NKONDO KAMUNYU3RD DEFENDANT

RULING

1. In the Notice of Motion dated 14th November, 2016, the Plaintiff is seeking for these orders:

a. That an injunction barring and restraining the Respondents, their agents, servants or employees from trespassing into, entering, putting up building, undertaking any works or in any other way whatsoever and howsoever interfering with the Applicant's unsurveyed land pending the hearing and determination of this suit.

b. That the costs of this Application be provided for by the Respondents.

2. The Application is predicated on the grounds that the Defendants have trespassed on the suit land; that the Defendants have been cutting down trees and that the injunctive order should issue.

3. In a short Affidavit, the Plaintiff deponed that he is the owner of the unsurveyed land measuring approximately 30 acres in Gaciongo Sub-Location, Tharaka Location, Mumoni District within Kitui County; that he inherited the suit land from his late father in the year 1989 and that he has been utilizing the land in question by grazing and cultivating it for over twenty (20) years.

4. It is the Plaintiff's deposition that the Defendants trespassed on the suit land in November, 2016 and started falling down trees and fencing off the land.

5. In response, the 1st Defendant deponed that the suit land is ancestral land; that he was born and brought up on the suit land and that the land he has settled on does not boarder the Plaintiff's land.

6. According to the 1st Defendant, when the area Chief attempted to resolve the dispute, the Plaintiff's advocate did a letter warning the Chief to keep off the dispute; that he has had buildings on his land since the year 1985 and that the Applicant has been violent.

7. The 2nd Defendant deponed that indeed the suit land is their ancestral land which was acquired by his grandfather in 1943; that they rightfully own the disputed land and that the land has eight permanent buildings on it.
8. The Plaintiff filed brief submissions in which he stated that his land is being wasted by the Defendants.
9. It is not in dispute that the suit property has not been surveyed.
10. Indeed, from the description of the land, the court cannot determine the extent of the land in question.
11. Considering that the both the Plaintiff and the Defendants are claiming that the land is their ancestral land, it is the Chief and the elders of the area who can deliberate on the extent of each parties' ancestral land.
12. The Defendants have annexed letters from the Chief of the area dated 29th August, 2016.
13. According to the said letter, the Chief informed the parties to choose elders who can resolve the dispute. However, the Plaintiff's advocates objected to the arrangement.
14. In view of the unwarranted objection by the Plaintiff to have the elders deliberate on the dispute, and in the absence of any document showing that he is the one entitled to the suit land, I find that the Plaintiff has not established a prima facie case with chances of success.
15. I therefore dismiss the Plaintiff's Application dated 14th November, 2016 with costs.

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

O.A. ANGOTE

JUDGE