



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 32 OF 2014**

**WILLIAM MATEE OLE RISA.....PLAINTIFF**

**VERSUS**

**STEPHEN MUIA MBUNGO .....1<sup>ST</sup> DEFENDANT**

**MUTUA MALELU .....2<sup>ND</sup> DEFENDANT**

**RULING**

1. In the Notice of Motion dated 13<sup>th</sup> March, 2015 Defendants are seeking for the following orders:

***a. That an order of injunction do issue restraining the Respondent either by himself, relatives, agents and/or employees from alienating and disposing the suit property or in any way interfering with the Applicants' quiet possession, enjoyment and use of the property pending the hearing and determination of the main suit.***

***b. That costs of the Application be in the cause.***

2. In his Affidavit, the 1<sup>st</sup> Defendant has deponed that him, together with other people, purchased from the Plaintiff's father in the early 1990's land parcel number Kajiado/Kaputiei Central/467; that they developed their respective portions and that in the year 2013, the late Matee Ole Risa caused the land to be sub-divided and new title documents were issued in favour of his sons.

3. It is the Defendants' case that they sued the late Matee Ole Risa in CMCC No. 423 of 2014 seeking for the cancellation of the titles in respect to the suit land; that after the death of Mr. Matee, his siblings started the process of sub-dividing the land again and that an injunctive order should issue.

4. In response, the Plaintiff deponed that plot number 467 ceased to exist when it was sub-divided by his late father and title documents issued; that the Defendants' claim can only lie as against his father's Estate if at all his father sold to them the suit land and that the Sale Agreements relied on by the Applicants do not specify the parcel of land subject which was the subject of sale transaction and that the Sale Agreements are not attested or executed.

5. It is the Plaintiff's deposition that the purported sale was null and void for failure to seek the Land Control Board consent and that the Defendants on one hand purport that they are entitled to the suit land as purchasers while at the same time claim that they are entitled to the suit land by way of adverse possession.

6. The advocates appeared before the court on 21<sup>st</sup> April, 2015 and made oral submissions. I have

considered those submissions.

7. The Defendants' case is that they purchased the original parcel of land known as Kajiado/Kaputiei Central/467 from the Plaintiff's father and that the suit property, which is currently registered in favour of the Plaintiff, was carved out of Plot No. 467.

8. The Defendants submitted that after purchasing the said land, they settled on the land and have put up permanent houses on their respective portions. The Defendants annexed photographs showing the nature of the developments that they have made on the land.

9. In their Counter-claim, the Defendants want the Plaintiff's title declared invalid and a declaration that they have acquired the suit land by adverse possession.

10. The Sale Agreements annexed on the Defendants' Affidavit do not indicate the land that the Defendants purchased. However, it is not clear to this court whether by the time the Defendants purported to purchase the said land, the same had been surveyed and a Title Deed issued.

11. Considering that the said agreements were entered into in 1993, and in view of the Defendants' claim that they took possession of their respective portions upon purchasing them, the Defendants are entitled to claim the land by way of adverse possession.

12. Indeed, the failure of the parties to obtain the consent of the Land Control Board within six (6) months from the date the purported agreements were entered into means that those agreements became invalid and the Defendants only claim is on the basis that they have been in adverse occupation of the suit land for a period of twelve (12) years continuously, exclusively and peacefully.

13. Whether the Defendants have established that they are entitled to the suit land, either as purchasers or by way of adverse possession can only be dealt with conclusively after trial.

14. For now, and considering that the *status quo* should be maintained pending the hearing of the suit, the Defendants' Application should be allowed.

15. For those reasons, I allow the Defendants' Application dated 13<sup>th</sup> March, 2015 as prayed.

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

**O.A. ANGOTE**

**JUDGE**