



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 176 OF 2016

WILLIAM MUTISYA MUINDIPLAINTIFF

VERSUS

PATRICK MUTUKU PAUL.....DEFENDANT

RULING

1. In the Application dated 11th October, 2016, the Plaintiff is seeking for the following orders:

a. That the Defendant be restrained either by himself or through his agents, servants, employees, proxies or any one acting on his behalf from, trespassing, encroaching, working on, constructing on or in any other way interfering with the Plaintiff's quiet possession of all that piece of land known as plot number 1330x situated at Katelembo Athiani Muputi Farming & Ranching Co-operative Society until hearing and determination of this suit.

b. That the Defendants do pay the costs of this Application.

2. The Application is premised on the grounds that the Plaintiff is the beneficial owner of plot number 1330x situated at Katelembo Athiani Muputi Farming and Ranching Co-operative Society (*the Society*); that the Defendant has on numerous occasions trespassed on the suit land and that the Defendant has gone ahead to put up illegal beacons on the suit land and cut down trees.

3. In his Affidavit, the Plaintiff deponed that he purchased a portion of plot number 1330 from the Society and that the said plot was later renamed as plot number 1330x.

4. In response, the Defendant deponed that plot numbers 1332 and 1330 belong to Kelekye Mutua and Kalekye Mungata respectively; that when the dispute was referred to the Society's Task Force, the Task Force trashed the claims by the Plaintiff about the existence of plot numbers 1330x and 1332x and that the Task Force restrained the Plaintiff from interfering with the quiet enjoyment of the owners of plot numbers 1330 and 1332.

5. The parties filed brief submissions which I have considered.

6. The law relating to the grant of a temporary injunction is now settled (*See the case of Giella vs. Cassman Brown (1973) E.A 358.*)

7. It is trite that for a temporary injunction to be issued, the Applicant has to show that he has a prima facie case with chances of success and that unless the injunctive order is granted, he will suffer irreparable loss that cannot be compensated by way of damages. If the court is in doubt about the two principles, then it has to decide the Application on a balance of convenience.

8. The Plaintiff's case is that on 23rd September, 2010, he purchased a half acre plot of plot number 1330 which was later renamed as plot number 1330x.
9. According to the Plaintiff, the initial owner of the plot was one Lazarus Wambua Muange who is a registered member of the Society.
10. The Plaintiff has exhibited the membership card that was issued to Lazarus Muange showing that he held one (1) share in the Society.
11. According to the Society's letter dated 18th June, 1998 and annexed on the Plaintiff's Affidavit, the said Lazarus Muange Wambua was allocated half an acre of Plot No. 1330 having paid Kshs. 60,000 to the Society.
12. The Plaintiff has also annexed an allocation slip dated 23rd June, 2010 showing that the Society had agreed to register ½ acre of plot number 1332x in the name of the Plaintiff. This is after the Plaintiff entered into a Sale agreement with the said Lazarus on the 23rd September, 2010.
13. The Plaintiff has exhibited photographs showing the house that he has developed on the suit land together with the fence and a borehole.
14. On the other hand, the Defendant has annexed on his Affidavit the proceedings of the Society's Task Force dated 27th March, 2017.
15. According to those proceedings, parcel of land number 1330 and 1332 belong to Kalekye Mungata and Kelekye Mutua respectively.
16. It is not however clear why and on whose authority the Defendant is trespassing on the suit land considering that his claim is that the land belongs to the Kelekye's.
17. In any event, the Plaintiff has produced evidence showing that the Society recognized that the land belonged to Lazarus Muange who sold it to the Plaintiff. The Plaintiff has since taken possession of the land and has put up a permanent house and a borehole. The Plaintiff cannot be faulted, at this stage, for developing the land.
18. In the circumstance, I am of the view that the Plaintiff has established a prima facie case with chances of success.
19. Furthermore, considering that the Plaintiff has developed the suit land by putting up a permanent building and a borehole, he will suffer irreparable damage that cannot be compensated by way of damages if he is ordered by this court to abandon the said house.
20. For those reasons, I allow the Application dated 11th October, 2016 as prayed.

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

O.A. ANGOTE

JUDGE