



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 221 OF 2014

JONES MULULU MUEKE PLAINTIFF

VERSUS

SIMON MWANIKI KAUNGA1ST DEFENDANT

ANTHONY KIOKO MWANIKI2ND DEFENDANT

RULING

1. In the Application dated 31st July, 2014, the Plaintiff is seeking for the following orders:

a. That temporary injunction does issue against the Defendants, their agents, servants and/or employees in particular from threatening the Plaintiff, trespassing into, alienating or disposing off, damaging, or destroying the developments in Plot Machakos/Mua Hills/143 (now sub-divided into Machakos/Mua Hills/601 and 602 in Mua Hills Settlement Scheme) and/or howsoever interfering with the Plaintiff's and his agents, servants and/or employees pending the hearing and the determination of this suit.

b. That the O.C.P.D Machakos Police Division does assist in affecting service of the orders, the pleadings and summons to enter appearance.

c. That costs hereof be to the Applicant.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that on diverse dates he purchased a portion of land known as Machakos/Mua Hills/143 measuring 9½ acres (*the suit land*) from the 1st Defendant.

3. It is the Plaintiff's case that between November, 1998 and December, 1999, he made several payments to the Vendor, his sons and daughter all amounting to Kshs. 17,500,000 for the said land; that subsequently, the land was sub-divided and registered as plot number 601 in the names of the 1st Defendant and that the 1st Defendant informed him that he was unable to obtain the consent of the Land Control Board consent to transfer the land to him due to a boundary dispute with the adjoining neighbour.

4. Although he took possession, the Plaintiff has deponed that the 1st Defendant's sons have told him to vacate the land; that he has since discovered that plot number 601 was transferred to the 2nd Defendant and that they want to deprive him of the suit land.

5. In response, the 2nd Defendant deponed that he is the registered proprietor of parcel of land known as

Machakos/Mua Hills/601; that the land previously belonged to the 1st Defendant and that the 1st Defendant is his father.

6. According to the 2nd Defendant, they had objected to their father selling the land and as a result of the objection, the 1st Defendant chased them out of the family home and that the family is willing to refund the Plaintiff the purchase price.

7. The 1st Defendant did not respond to the Application.

8. The Plaintiff and the 2nd Defendant's advocates filed their respective submissions and authorities which I have considered.

9. The 1st Defendant was the registered proprietor of land known as Machakos/Mua Hills/143 measuring 15.0Ha.

10. According to the copy of the register, the register for Plot No. 143 was closed upon sub-division. The sub-division of Plot No. 143 was done on 11th April, 2003 and created Plot Nos. 601 and 602.

11. According to exhibited official search, Plot No. 601 was registered in favour of the 1st Defendant on 10th May, 2012. On 15th January, 2014, the said plot was transferred to the 1st Defendant.

12. The 1st Defendant has deponed that he is the son of the 2nd Defendant and that they have always resisted the sale of the suit plot to the Plaintiff.

13. Indeed, the 2nd Defendant has not denied that the 1st Defendant entered into various Agreements for Sale with the Plaintiff.

14. The 1st Defendant has not filed any pleading to oppose the Plaintiff's Application.

15. The failure by the 1st Defendant to respond to the allegations raised in the Plaintiff's Affidavit means that he admits that before Plot No. 143 was sub-divided, he had sold a portion of the same measuring approximately 9½ acres to the Plaintiff.

16. Considering that the 1st Defendant has not denied that indeed he sold a portion of the suit land, and in view of the fact that the land initially belonged to him, then the suit property should be preserved so to determine the circumstances under which the 2nd Defendant became the registered owner of Plot No. 601.

17. The evidence before me shows that the Plaintiff had the land he purported to buy demarcated. Indeed, the evidence before me shows that he fenced the portion he purported to have bought from the 1st Defendant. That is the portion that is currently registered in favour of the 2nd Defendant.

18. The issue of whether the agreements that the Plaintiff entered into with the 1st Defendant are void for want of the consent of the Board can only be dealt with after the hearing of the matter.

19. It is for the reasons that I have given above that I find that the Plaintiff has established a prima facie case with chances of success.

20. For those reasons, I allow the Application dated 31st July, 2014 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 22ND DAY OF SEPTEMBER, 2017.

O.A. ANGOTE

JUDGE