



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 15 OF 2016

JOHN KYALO MULINGE.....PLAINTIFF

VERSUS

JULIUS KIMEU MUTUA & 19 OTHERS.....DEFENDANTS

RULING

1. In the Application dated 15th March, 2016, the Plaintiff is seeking for the following orders:

a. That the Defendants be restrained either by themselves or through their agents, servants, employees or any one acting on their behalf from selling, advertising for sale, making offers, alienating, transferring or disposing or evicting the Plaintiff from all that parcel of land known as Masii/Kithangathini/224 until hearing and determination of this suit.

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

2. The Application is premised on the grounds that the suit land was registered in the name Kiithya Nthiwa who was Defendants' husband, father and/or grandfather; that while the Succession Cause was pending, the Defendants sold their shares in the suit land to the Plaintiff between 1992 and 1994 and that there was an agreement between the Plaintiff and the Defendants that each one of them will transfer his portion upon completion of the Succession Cause.

3. It is the Plaintiff's case that after entering into agreements with the Defendants on different dates, all the Defendants agreed and allowed him to settle on the cumulative 55.2 acres which he bought; that he has put up a home on the said land and that the 1st Defendant informed him that he does not recognize the agreements he had entered into.

4. In reply, the 1st Defendant deponed that the Defendants have never sold the suit land to the Plaintiff; that the Defendants did not have authority to deal with the Estate of the deceased prior to the Confirmation of Grant of letters of administration which was issued on 12th February, 2014 and that under Section 45 of the Law of Succession Act, no one is allowed to intermeddle with the free property of a deceased person.

5. The Plaintiff's and the Defendants' advocates filed their respective submissions and authorities which I have considered.

6. It is not in dispute that the Defendants are the beneficiaries of the Estate of the late Kiithya Nthiwa who was the registered proprietor of the suit land. The said Kiithya Nthiwa died on 24th December, 1984.

7. The Plaintiff has annexed on his Affidavit the numerous agreements that he entered into with the Defendants between the year 1992 and 1993.
8. According to the Plaintiff, the beneficiaries of the Estate of Mr. Nthiwa sold their respective portions of land and put him in possession of the same.
9. The Plaintiff has exhibited photographs showing the developments he has made on parcels of land he purchased from the Defendants.
10. It is true, as submitted by the 1st Defendant's counsel, that under Section 45 of the Law of Succession Act, one is not allowed to intermeddle with the Estate of the deceased.
11. However, where the beneficiaries of the Estate of the deceased purport to sell their respective share, such agreements can be enforced by the court once the said beneficiaries are allocated their portions of land by the court.
12. The Plaintiff has annexed the "*rectified*" Certificate of Confirmation of Grant which shows how the Defendants shared the suit property.
13. The Plaintiff has deponed that he entered into agreements for the portions of land which were to be inherited by the Defendants.
14. If indeed it is shown that the said Defendants have since been allocated their respective share of the suit land vide the Certificate of Confirmation dated 12th February, 2014, then the Plaintiff will be entitled to an order of specific performance against them.
15. Of course, the order of specific performance can only issue if the law of Contract Act was complied with as at the time the purported agreements were executed.
16. Considering that the Plaintiff is in possession of the suit land, and in view of the fact that the legality of the purported Sale Agreements will be interrogated at trial, the order for injunction pending the hearing of the suit should issue.
17. It is for those reasons that I allow the Plaintiff's Application dated 15th March, 2016 as prayed.

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

O.A. ANGOTE

JUDGE