



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 136 OF 2016**

**JOHN MUTUNDA, VINCENT MUNYOKI &  
MWENDE NGUI (*Suing as Administrators of the Estate of  
PETER MUNYOKI MUSYOKA*) .....PLAINTIFFS**

**VERSUS**

**JOHN MUNUVE MUSEE .....1<sup>ST</sup> DEFENDANT**

**MUE MUNUVE.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. In their Application dated 30<sup>th</sup> August, 2016, the Plaintiffs are 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 invading, encroaching, working on, constructing on, using, alienating or in any other way interfering with part or whole of all that parcel of land known as Miambani/Miambani/1671 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 is registered in the name of the late Peter Munyoki Musyoka; that the Defendants have invaded and encroached on the suit land and that the actions of the Defendants amounts to intermeddling and wasting of the Estate of the deceased.

3. According to the deposition of the Plaintiffs, the suit land borders parcel of land known as Miambani/Miambani/1672 which is registered in the name of the 1<sup>st</sup> Defendant.

4. The Plaintiff further deponed that soon after the demise of the deceased, the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant embarked on an exercise to annex part of the suit land; that in October, 2015, the District Land Adjudication Officer visited the land and established boundaries in the presence of all the parties and that in August, 2016, the Defendants encroached on the suit land and dug trenches with the intention of laying a foundation for construction of a building despite the Plaintiffs' family's protests.

5. In response to the Application, the 1<sup>st</sup> Defendant deponed that they are constructing on a parcel of land known as Miambani/Miambani/1672; that the issue of the boundary is still pending and that the boundary is very far from where his construction is.

6. The Plaintiffs' and the Defendants' advocates filed their respective submissions and authorities which I have considered.

7. It is not in dispute that the late Peter Munyoki Musyoka was the registered proprietor of a parcel of land known as Miambani/Miambani/1671 while the 1<sup>st</sup> Defendant is the proprietor of a neighbouring plot being parcel of land known as Miambani/Miambani/1672.

8. The Plaintiffs have annexed on their Supporting Affidavit the letter dated 26<sup>th</sup> October, 2015 from the Kitui District Land Adjudication Officer addressed to the Plaintiffs and the 1<sup>st</sup> Defendant.

9. In the said letter, the District Land Adjudication Officer determined the dispute in respect of the boundary between parcel number 1671 and 1672.

10. In the said letter, the Land Adjudication Officer directed that the 1<sup>st</sup> Defendant stop interfering with parcels of land number 1673, 1671 and 2443 and "*observe the boundary as re-established on 12<sup>th</sup> October, 2015 which was based on the map drawn during demarcation and survey.*"

11. The Plaintiffs' complaint is that the Defendants have continued interfering with the suit property despite the dispute in respect to the boundary between Plot Nos. 1671 and 1672 having been resolved by the Land Adjudication Officer.

12. Having read the report of the Land Adjudication Officer, it is clear that the issue of how the boundary between Plots Nos. 1671 and 1672 should be drawn was decided upon with precision. If the Defendants were not satisfied with the directions of the Land Adjudication Officer, they should have appealed to this court.

13. In the circumstances, the Plaintiffs have established a prima facie case with chances of success. The boundary as drawn by the Land Adjudication Officer in respect of Plot Nos. 1671 and 1672 should be complied with pending the hearing of the suit.

14. For those reasons, I allow the Application dated 30<sup>th</sup> August, 2016 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2017.**

**O.A. ANGOTE**

**JUDGE**