



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MACHAKOS
ELC. CASE NO. 2 OF 2017

**KENYA AFRICAN NATIONAL
TRADERS & FARMERS UNION.....PLAINTIFF**

VERSUS

**FLORENCE MUOTI KIOKO &
JAMES MULIKA MUINDI (*substituted as Defendant in
place of AGNES MBITHE MUINDI – Deceased*).....1ST DEFENDANT**

**LUKENYA RANCHING AND
FARMING CO-OPERATIVE SOCIETY.....2ND DEFENDANT**

AND

MBUKONI HOLDINGS LTD.....1ST INTERESTED PARTY

JARED OTIENO NGOJE.....2ND INTERESTED PARTY

ROBERT NYABANDO NDUKO.....3RD INTERESTED PARTY

JOHN MUSEMBI MUTALA.....4TH INTERESTED PARTY

GEORGE MORARA MOMANYI.....5TH INTERESTED PARTY

MICHAEL NJAMA KAMAU.....6TH INTERESTED PARTY

SELINA NDUNGWA ISEVA.....7TH INTERESTED PARTY

ERICK MURITHI GATHUMBI.....8TH INTERESTED PARTY

JENIFFER WAMBU.....9TH INTERESTED PARTY

SAMUEL MUNYIRI MUKWA.....10TH INTERESTED PARTY

DAVIS NYAGAKA NYAMWANGE.....11TH INTERESTED PARTY
HIRAM MAINA CHEGE.....12TH INTERESTED PARTY
DENNIS WANYONYI MASINDE.....13TH INTERESTED PARTY
REUBEN LAISA MURUNGA.....14TH INTERESTED PARTY
ERNEST ACHUTI MUGAMBI.....15TH INTERESTED PARTY
PRISCILLA WAMAITHA MITHAMO.....16TH INTERESTED PARTY
ERASTUS MUCHEMI EUSTACE.....17TH INTERESTED PARTY

RULING

1. In the Application dated 19th December, 2016 Interested Parties are seeking for the following orders:
 - a. *The Respondents by themselves, their agents and/or employees be restrained from alienating, selling sub-dividing, transferring, leasing, charging, dealing in, transacting on or in any manner disposing of the property known as L.R. Mavoko Town Block 3/2056 (herein after referred to as “the suit property” pending the hearing and determination of this Application inter partes.*
 - b. *The Respondents by themselves, their servants, agents, and/or employees be restrained from placing beacons, pulling down fences, demolishing houses and other existing structures on the suit property or trespassing on any part thereof pending hearing and determination of this Application.*
 - c. *The orders of the court (hereinafter referred to as “the court orders”) emanating from the consent order of the Honourable Court delivered herein on 19th December, 2014 by the Honourable Justice Kariuki be reviewed and set aside:*
 - i. *That Florence Muoti Kioko and James Mulika Muindi the administrators of the Estate of Agnes Mbithe Muindi pursuant to Letters of Administration issued in Machakos High Court P & A No. 189 of 2009 on the 12th May, 2009 be and are hereby substituted as Defendant in this suit in place of Agnes Mbithe Muindi (deceased).*
 - ii. *That the Plaintiff herein Kenya African National Traders and Farmers Union be and are hereby registered as proprietor of a portion measuring 20 acres of land out of the suit premises L.R. Mavoko Town/Block 3/2056 and the remainder thereof-measuring 7 acres be registered in the name of Peter Muiruri Kiarie.*
 - iii. *That the caution lodged by the Plaintiff – Kantafu against the title to L.R. Mavoko Town/Block 3/2056 on the 19th December, 2011 be removed forthwith.*
 - iv. *That upon execution of 1, 2 and 3 above this matter be marked as settled and be no orders as to costs.*
- d. *That the costs of this Application be borne by the Respondents.*

2. In support of the Application, the 1st Interested Party’s Director deponed that the 1st Interested Party purchased land previously known as Plot No. 445, Lukenya Ranching and Farming Co-operative Society Limited which later changed to Mavoko Town/Block 3 /2056 (*the suit land*) from the 1st Defendant.

3. According to the Applicant, the 1st Defendant requested the Applicant to assist her in pursuing the Letters of Administration; that the court granted the said Letters of Administration and that the Applicant sub-divided the suit property into several plots which it sold to more than 200 people including the Interested Parties herein.
4. The Applicants' case is that on 17th August, 2012, the 1st Defendant fraudulently obtained Letters of Administration in respect to the suit land which was registered in the name of Agnes Mbithe Muindi and that the Respondents thereafter started demolishing fences and tampering with the then existing beacons.
5. It is the Interested Parties' case that the Plaintiff conspired with the 1st Defendant to institute this suit against a deceased person; that the Interested Parties filed ELC No. 225 of 2014 to stop the impending evictions and that the court made an order of *status quo*.
6. The 1st Interested Party's Director deponed that the Plaintiff and the 1st Defendant fraudulently entered into a consent to defeat the Applicant's claim in ELC No. 225 of 2014; that using the said consent, they caused the suit land to be sub-divided into two portions and that the said court order should be reviewed and set aside.
7. In response, the Plaintiff's Chairman deponed that the Plaintiff is unaware of the agreement of 14th September, 2005; that the Plaintiff paid the full purchase price for the suit land on 5th May, 1997 and that upon execution of the Sale Agreement of 14th September, 1994, the Plaintiff paid for the transfer of the suit land to itself.
8. It is the Plaintiff's case that it took possession of the land and sub-divided it into many plots and allocated it to its members and that it was only in the year 2011 that the Plaintiff learnt that a Title Deed had been issued in the name of Agnes Mbithe.
9. The Plaintiff's Chairman deponed that the person who purported to sell the suit land to the 1st Applicant did not have capacity to sell the land; that the agreement of 14th September, 2005 was invalid because the consent of the Land Control Board was never obtained and that the consent order was freely entered into.
10. The Plaintiff's Chairman finally deponed that the consent order has already been executed and spent.
11. In his Further Affidavit, the 1st Applicant's Director deponed that the Sale Agreement referred to in the Plaintiff's Affidavit was not executed by Mrs. Agnes Mbithe; that the Plaintiff never took possession of the land as claimed; that the Applicant was put in possession of the Title Deed and that a valid Sale Agreement does not need the consent of the Board.
12. In his submissions, the Applicants' advocate deponed that the Applicants have a beneficial interest in the suit land and should be joined in the suit.
13. Counsel submitted that the 1st Defendant fraudulently made an Application and obtained fresh Letters of Administration with respect to the suit land which he used to record a consent so as to defeat Nairobi ELC No. 225 of 2014.
14. The Plaintiff's counsel submitted that it is only the parties to a suit that can apply to have other persons joined in the suit and that the Applicants are not necessary or proper parties in this matter.
15. Counsel submitted that the impugned consent order has already been implemented; that there is no suit to which the Applicants can be joined and that the Application is defective because it seeks other substantive reliefs.
16. This suit was commenced by way of an Originating Summons in which the Plaintiff sought to be

declared the owner of Plot No. 445, which later came to be parcel of land known as Mavoko Town Block 3/2056 by way of adverse possession.

17. According to the Originating Summons, the Plaintiff purchased the suit land from the initial 1st Defendant – Agnes Mbithe Muindi in 1994 and took possession of the land the same year. However, the said Agnes Mbithe never transferred the land to the Plaintiff.

18. The Plaintiff annexed on the Originating Summons the purported agreement between itself and Agnes Mbithe dated 28th July, 1994 and numerous petty cash vouchers showing the payments it made to Agnes.

19. The Plaintiff also exhibited the copy of the register for Mavoko Town Block 3/2056 which shows that Agnes Mbithe was issued with a Title Deed for the suit land on 26th August, 2004.

20. The record shows that on 9th December, 2014, the court adopted the consent dated 27th August, 2014 as an order of the court.

21. In the consent, Florence Muoti Kioko and James Mulika Muindi described themselves as the administrators of the Estate of Agnes Mbithe Muindi pursuant to Letters of Administration issued in Machakos High Court P & A Cause No. 189 of 2009 on 12th May, 2009. The said consent allowed the said administrators to be substituted as Defendants in the suit instead of Agnes Mbithe.

22. The consent further provided that the Plaintiff be registered as the proprietor of a portion measuring 20 acres while the remaining 7 acres of Plot No. 2056 was to be registered in the name of Peter Muiruri Kiarie. The matter was then marked as settled.

23. On the basis of the consent, the title in respect of Mavoko Town/Block 3/2056 was closed and two titles being Mavoko Town. Block 3/54594 and 54595 were issued in the names of the Plaintiff and Peter Muiruri Kiarie on 18th November, 2016.

24. In the meantime, the Interested Parties had instituted Nairobi ELC. No. 225 of 2014 in which they sought for injunction as against Edwin Luvita, John Munyao Muindi, Mulika Muindi and Florence Muoti Kioko.

25. In the Nairobi suit, the Interested Parties herein obtained the orders of *status quo* pending the hearing of the suit, meaning that neither the Plaintiff nor the Defendants were to interfere with the status of the land.

26. It is instructive to note that the people who entered into the consent of 27th August, 2014, that is Florence Muoti Kioko and James Mulika Muindi, are also Defendants in Nairobi HCCC No. 225 of 2014.

27. The Interested Parties' case herein and in Nairobi HCCC No. 225 of 2014 is that the 1st Interested Party purchased Plot No. 445 measuring 27 acres from Mulika Muindi and John Munyao Muindi vide an agreement dated 14th September, 2005. The said Vendors have denied having executed the agreement.

28. Considering that the land that the 1st Interested Party is claiming to have purchased is the same land that the Plaintiff purports to have bought, I find that the Interested Parties are necessary parties in these proceedings.

29. I say so because Order 1 Rule 10 (2) of the Civil Procedure Rules allows the court either upon or without the Application of either party to join any party in the suit whether as Plaintiff or Defendant or whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit.

30. The presence of the Interested Parties in this matter is necessary to enable the court to determine with

finality as to who between the Plaintiff and the Interested Parties is entitled to the suit land.

31. The Plaintiff has admitted that it is in possession of a Title Deed in respect of a portion of the suit land pursuant to the consent order that was filed in court on 30th September, 2014 and adopted by the court on 9th December, 2014.

32. By the time the Plaintiff and the Defendants entered into the consent, the Interested Parties had sued the Defendants herein in respect to the same property in Nairobi ELC. 225 of 2014 and even obtained an order of status quo on 8th July, 2014.

33. Considering that the Defendants herein were aware that the Interested Parties were claiming the suit land in ELC No. 225 of 2014, it was mischievous on their part to have entered into the consent that was filed in court on 30th September, 2014, whose effect was to transfer the suit land to the Plaintiff and one Peter Muiruri.

34. Indeed, the consent order that was adopted by the court on 9th December, 2014 had the effect of changing the nature of the suit property thus prejudicing the Interested Parties' claim in Nairobi ELC. No. 225 of 2014.

35. Considering that the issue of who between the Plaintiff and the 1st Interested Party is entitled to the suit land can only be dealt with at trial, and in view of the conflicting Letters of Administration that were purportedly issued by the Machakos High Court in the year 2007 and 2009 in respect to the Estate of the late Agnes Mbithe, the consent order that was adopted by this court on 19th December, 2014 settling this matter should be set aside.

36. For those reasons, I allow the Interested Parties' Application dated 19th December, 2016 in the following terms:

a. The 1st-17th Interested Parties be and are hereby enjoined in this suit as Defendants.

b. The Plaintiff to amend the Originating Summons to include the Interested Parties as Defendants within fourteen (14) days from the date of this Ruling.

c. The Interested Parties, whether served with the amended Originating Summons or not, to file their pleadings in this matter within twenty eight (28) days from the date of this Ruling.

d. The orders of the court of 19th December, 2014 emanating from the consent order of the parties herein dated 27th August, 2014 be and are hereby set aside.

e. The status quo prevailing in respect to parcel of land known as Mavoko Municipality Block 3/54594 and 54595 to be maintained pending the hearing and determination of the suit.

f. This matter to be mentioned alongside Nairobi ELC. No. 225 of 2014 on a date to be fixed in the registry for further directions.

g. Each party to bear its/his own costs.

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

O. A. ANGOTE

JUDGE