



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 133 OF 2014

MAVOKO LAND DEVELOPMENT CO. LTD.....PLAINTIFF

VERSUS

ERASTUS KIMEUDEFENDANT

RULING

1. In the Notice of Motion dated 16th October, 2014, the Plaintiff is seeking for these reliefs:

a. That pending the hearing and determination of this suit, the Honourable Court be pleased to issue an injunction order restraining the Defendant, the Defendant's servants, and/or agents, servants and/or person claiming through the Defendant from trespassing, encroaching, constructing and/or alienating or selling the Plaintiff's property Plots No. 40 and 41 being a sub-division of land L.R No. 25062 pending the hearing and determination of this suit.

b. Costs and interest of this Application be on the cause.

2. In the Supporting Affidavit, the Plaintiff's Managing Director has deponed that the Plaintiff is the registered proprietor of the land reference number 25062; that the Defendant invaded the land on 15th September, 2014 and that Plots No. 40 and 41 are a sub-division of L.R No. 25062.

3. In response, the Defendant deponed that he is the lawful owner of plot numbers 4 and 5 which were allocated to him by Kasina Housing Scheme; that he was subsequently issued with the letters of allotment for the two plots and that the suit land is separate and distinct from his two plots.

4. It is the Defendant's case that he has enjoyed peaceful and uninterrupted occupation of the suit land for a period of over twelve (12) years.

5. In the Further Affidavit, the Plaintiff's Managing Director deponed that the suit land neighbours L.R Nos. 25061, 1504/7, 11895/12, 11895/16, 11895/17, 21796 and 11895/R; that L.R. No. 11895/27 is not one of the neighbouring plots and that the Commissioner of Lands has denied the existence of a title for L.R. No. 11895/27.

6. According to the Plaintiff, Kasina Housing Scheme Society was incorporated on 24th February, 2005 while the Leasehold title for L.R. No. 11895/27 was obtained by Kasina Housing Society in 1992; that the said Society has two titles with different acreages and that plots numbers 4 and 5 appear in the Plaintiff's map as No. 40 and 41 which are inside L.R. No. 25062.

7. Both the Plaintiff's and the Defendant's advocate filed their respective submissions and authorities

which I have considered.

8. The evidence before me shows that the Plaintiff was registered as the proprietor of L.R. No. 25062 measuring 17.58Ha on 30th August, 2000.

9. The Deed Plan annexed on the Plaintiff's grant shows the neighbouring parcels of land as: L.R. Nos. 25061, 1504/7, 1185/R, 21796 and the River.

10. The Plaintiff has also produced in evidence the proposed sub-division of L.R. No. 25062 which shows the existence of Plot Nos. 40 and 41 as one of the numerous portions of land within L.R. No. 25062.

11. Although the Defendant has deponed that he was allocated Plot Nos. 4 and 5 after purchasing the same from Kasina Housing Estate, he has not shown how Kasina Housing Estate acquired L.R. No. 11875/27 which is supposed to be distinct from L.R. No. 25062.

12. Indeed, the Plaintiff has exhibited a letter from the Commissioner of Lands showing that the title for L.R. No. 11895/27 is a forgery. The Defendant has countered that by exhibiting a letter from the Director of Surveys showing that indeed L.R. No. 11895/27 exists.

13. Considering that there is a letter from the Director of Surveys which seems to suggest that indeed L.R. No. 11895/27 exists and which might be overlapping on L.R. No. 25062, it would be prudent that both the Plaintiff and the Defendant are barred from accessing the two portions of land pending the hearing of the suit.

14. Indeed, the issue as to the existence and authenticity of the titles for L.R. Nos. 25062 and 11895/27 can only be dealt with conclusively if Kasina Housing Scheme Society is joined in this matter.

15. For those reasons, I disallow the Application dated 16th October, 2014 with no orders as to costs and make the following specific orders:

a. The prevailing status quo in respect of L.R. No. 25062 and 11895/27 and the sub-divisions therein be maintained pending the hearing and determination of the suit, meaning that the sub-divisions in the two properties should not be transferred, alienated, charged or dealt with in any manner whatsoever by the two parties or at all.

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

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

O.A. ANGOTE

JUDGE