



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 62 OF 2017

NANCY KAMENE MAINGIPLAINTIFF

VERSUS

JOSEPHINE MWIKALI NGUMBAU1ST DEFENDANT

THE REGISTRAR OF TITLES, NAIROBI.....2ND DEFENDANT

THE COMMISSIONER OF LANDS, NAIROBI3RD DEFENDANT

THE DIRECTOR OF SURVEYS, NAIROBI4TH DEFENDANT

THE CHIEF LAND REGISTRAR, NAIROBI5TH DEFENDANT

HON. ATTORNEY GENERAL6TH DEFENDANT

THE DISTRICT LAND REGISTRAR MACHAKOS COUNTY....7TH DEFENDANT

RULING

1. In the Application dated 26th October, 2015, the Plaintiff is seeking for the following orders:

a. That pending the hearing and determination of this suit, the Defendants/Respondents whether by themselves, their servants, employees and/or agents be and are hereby restrained from entering onto Land Title No. Mavoko Municipality Block 7/117, constructing or continuing with the construction of any structure thereon, or purporting to sell, alienate, transfer, mortgage or otherwise dispose of the Land Title No. Mavoko Municipality Block 7/117 or any portion thereof.

b. That upon hearing of the Application, a permanent injunction do issue prohibiting the Defendants/Respondents from entering or interfering with the title or peaceful enjoyment by the Plaintiff of Land Title No. Mavoko Municipality Block 7/117.

c. That the costs of this Application be borne by the Defendants/Respondents.

d. That this Honourable Court be pleased to issue any other or further orders that it may deem fair and just.

2. The Application is premised on the grounds that the Plaintiff is the registered owner of land known as

Mavoko Municipality Block 7/117 (*the suit land*); that the Defendant has illegally claimed ownership of the suit land and that the injunctive order should issue.

3. In response, the 1st Defendant stated that she is the registered proprietor of land known as L.R. No. 337/1008 and that the said land was registered in her favour on 1st October, 1999 having being allocated to Benjamin Kitaka Mutuku by the Commissioner of Lands on 18th October, 1990 as an unsurveyed Residential Plot No. 90 Athi River Town.

4. According to the 1st Respondent, the Plaintiff colluded with the officials of Mavoko Municipality and the Ministry of Lands to be allocated her land in the year 2005.

5. In the Supplementary Affidavit, the Plaintiff deponed that by 5th February, 1996, he had already being issued with a letter of allotment for the suit land; that she has been in occupation of the suit land for the past twenty five (25) years and that the area has a map showing where the plot is situated.

6. The Plaintiff and the 1st Defendant filed their respective submissions which I have considered. I have also considered the authorities on record.

7. According to the documents before me, the Plaintiff was issued with a Certificate of Lease for Mavoko Municipality Block 7/117 on 3rd June, 2005. This was after she had been allocated the land by the Commissioner of Lands vide a letter of allotment dated 6th October, 1995.

8. On the other hand, the 1st Defendant is in possession of a grant in respect of L.R. No. 68338, L.R. No. 337/1008 that was registered in her favour on 5th February, 1996.

9. According to the 1st Defendant, she was registered as the proprietor of the said land after purchasing it to the allottee. The 1st Defendant has exhibited the letter of allotment dated 18th October, 1990 that was issued to Benjamin Kitaka Mutuku, the original allottee.

10. The evidence before me shows that both the Plaintiff and the 1st Defendant are in possession of title documents in respect to the same land.

11. Indeed, it would appear that one of the title documents was issued to the parties either fraudulently or by mistake.

12. The issue as to who has a genuine title document can only be determined after trial.

13. The 1st Defendant has not denied the Plaintiff's assertion that she has constructed a house on the suit land and that she is in occupation of the said house.

14. Considering that the court cannot determine who between the Plaintiff and the 1st Defendant has a prima facie case with chances of success at this stage, the order of injunction should issue in favour of the Plaintiff because she is the one who is in possession of the suit land.

15. In view of the fact that the Plaintiff has constructed a permanent house on the land, she will suffer irreparable damage if she is evicted from the house at this stage.

16. For those reasons, I allow the Plaintiff's Application dated 26th October, 2015 with no order as to costs.

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

O. A. ANGOTE

JUDGE