



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 35 OF 2016**

**ANDREW MANGUU KABOI .....PLAINTIFF**

**VERSUS**

**WELLINGTON KIHATO .....DEFENDANT**

**RULING**

1. What is before me is the Application by the Plaintiff dated 26<sup>th</sup> May, 2016 seeking for the following orders:

***a. That upon granting prayer (2) hereinabove and/or pending the hearing and determination of the main suit herein the Honourable Court be pleased to grant orders of temporary injunction to issue to the Respondent whether by himself, his agents, servants, employees, workers, and/or otherwise whosoever from unlawfully entering and/or encroaching into and trespassing thereon and interfering, damaging, demolishing, wasting, constructing on, alienating or otherwise dealing with Plaintiff's parcel of land known as Plot Number Mithini C 16 located at Muka Mukuu Farmers Co-operative Society Limited.***

***b. That this Honourable Court be pleased to issue orders to the effect that the Police Officer commanding Kangundo Police Station be ordered to enforce compliance of the orders sought.***

***c. That the Honourable Court be pleased to make such other and/or further orders that it may deem fit and expedient in the interest of justice to grant.***

***d. That whole of the costs of this Application be borne by the Respondent.***

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that he is the proprietor of land known as plot number Mithini C 61 located at Muka Mukuu Farmers-Co-operative Society Limited.

3. It is the Plaintiff's deposition that on 10<sup>th</sup> August, 2015, the Defendant encroached on his land and that he lodged a complaint with the Management Committee of the Society who confirmed in writing that the land is his.

4. In his response, the Defendant deponed that he is a member of Muka Mukuu Farmer's Co-operative Society Ltd (*the Society*); that he bought the suit land from Julius Nyerere Sila who is member number 1701 and that he conducted a search before purchasing the said land.

5. According to the Defendant, the suit land was initially registered in the name of Paul Nthekethe who

sold it to Julius Nyerere Sila who paid Kshs. 20,000 to the Society.

6. It is the Defendant's case that he has been on the suit land since he bought it and has dug a well, build a house for his farmhand, erected a chain link fence, planted trees, bananas and conducted commercial cultivation on the land.

7. The Respondent filed submissions and authorities which I have considered.

8. The Plaintiff's case is that he owns land known as Mithini C 16 located at Muka Mukuu Farmers Co-operative Society Limited. The Plaintiff has annexed on his Affidavit two letters dated 22<sup>nd</sup> October, 2015 and 24<sup>th</sup> March, 2016 by the Society respectively.

9. In the letter of 22<sup>nd</sup> October, 2015, the Society stated that Plot No. Mithini 16B belongs to Andrew Manguu Kaboi under share number 397.

10. In the letter of 24<sup>th</sup> March, 2016, the Society informed Julius Nyerere Sila to vacate Plot No. Mithini C 16 for Andrew Manguu Kaboi.

11. In the same letter, Julius Nyerere was informed that according to the records of the Society, Raphael Kamba Kathumbi was allocated Plot No. Mithini C 16 on 19<sup>th</sup> August, 1996 and transferred the same to Andrew Manguu Kaboi on 17<sup>th</sup> November, 2017.

12. Other than those two letters, the Plaintiff did not produce copies of the members of the Society to show that the said Julius Nyerere or the Plaintiff was ever a member of the Society.

13. On the other hand, the Defendant produced in evidence the copy of the receipt dated 24<sup>th</sup> September, 2015 showing that he had paid to the Society the transfer fee.

14. The Defendant has also exhibited a copy of membership card which shows that he was allowed to be part of the membership of the Society and was awarded certificate number 445. The certificate of Paul Nthekethe was also exhibited together with the fees that were paid by the Plaintiff.

15. The Defendant has further exhibited the Agreement dated 24<sup>th</sup> July, 2015 in which Julius Nyerere entered into with him.

16. The Defendant has developed the suit land by putting up a chain link fence and a permanent house. The Plaintiff is not in occupation of the land.

17. Considering that the Defendant has exhibited receipts showing that he is a paid up member of the Society after purchasing the shares of Mr. Nyerere who was member of the Society, and in view of the developments that the Defendant has made, it is the Defendant who will suffer loss if the injunctive order is issued.

18. The Plaintiff has not shown by way of evidence that he is a member of the Society. There is no evidence to show how the Plaintiff was allocated the said land, if at all. Consequently, I find and hold that the Plaintiff has not established a prima facie case with chances of success.

19. For those reasons, I dismiss the Application dated 26<sup>th</sup> May, 2016 with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23<sup>RD</sup> DAY OF NOVEMBER, 2017.**

**O. A. ANGOTE**

**JUDGE**