



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MACHAKOS

ELC. CASE NO. 3 OF 2016

BENARD KATA KITUKU.....1ST PLAINTIFF

BONIFACE MUIA KITUKU.....2ND PLAINTIFF

VERSUS

VERONICA NDINDA MWEMA.....1ST DEFENDANT

THE HON. ATTORNEY GENERAL.....2ND DEFENDANT

THE COUNTY LAND REGISTRAR (MKS).....3RD DEFENDANT

RULING

1. In the Application dated 19th January, 2016, the Plaintiffs are seeking for the following orders:

a. An injunction do issue restraining the 1st Defendant/Respondent whether herself, her agent or servant or howsoever from selling, allotting, alienating or transferring or other dealing in Mavoko Town Block 3/31271 pending the determination of this suit.

b. Removal of a caution registered on the 13th July, 2015 forthwith.

c. All further registration of cautions, restrictions in the ownership, leasing, allotment, user occupation or possession or any kind of right of interest in Mavoko Town Block 3/31271 with the County Land Registrar at Machakos and all registering authorities be prohibited until further orders of this court.

d. Costs be provided for.

2. The Application is based on the ground that a caution was lodged on the property on the 13th July, 2015 by the 1st Defendant claiming purchaser's interest; that there is no known contract between the Plaintiffs and the 1st Defendant and that the suit land is registered the name of the Plaintiffs.

3. In the Affidavit, the 1st Plaintiff deponed that the property is an inheritance from their parents; that there is no agreement in existence between him and the 1st Defendant and that the manner in which the caution was registered offends the provision of the Land Registration Act.

4. The 1st Plaintiff deponed that he is not aware of any money which was paid to him or the 2nd Plaintiff in respect to the suit land and that the caution of 13th July, 2015 is invalid. The 1st Plaintiff annexed on his Affidavit the Further Affidavit of the 2nd Plaintiff.

5. In his Replying Affidavit, the 2nd Plaintiff denied ever giving the 1st Plaintiff authority to institute the suit on his behalf; that he did not swear the "Further Supporting Affidavit" annexed on the 1st Plaintiff's Affidavit and that the signature on the said Affidavit is not his.

6. According to the 2nd Plaintiff, the suit land measuring approximately 40 acres was initially owned by their father Kituku Kitavi; that after the demise of their father, he found that the 1st Plaintiff had already caused the sub-division of the said land which he had sold and that he has no interest in the ten (10) acres which the 1st Defendant's husband bought.

7. On her part, the 1st Defendant deponed that her husband bought ten (10) acres of the suit land; that the Plaintiffs have not produced any Title Deed to show that they are the absolute owners of the suit land and that it is the 1st Plaintiff who sub-divided the suit land into several portions.

8. The Applicant swore a Further Affidavit which I have considered.

9. The 1st Plaintiff, the 2nd Plaintiff and the 1st Defendant's advocates filed their respective submissions which I have considered.

10. In the Verifying Affidavit in support of the Plaintiffs, the 1st Plaintiff has deponed that he has been authorized to swear the Affidavit on behalf of the 2nd Plaintiff.

11. The 2nd Plaintiff has denied that he authorized the 1st Plaintiff to file the suit, or to swear any Affidavit on his behalf. According to the 2nd Plaintiff, the Affidavit annexed on the Supporting Affidavit was not signed by him.

12. Considering that the suit land is registered in the name of the two Plaintiffs, and having denied that he authorized the 1st Plaintiff to file the suit, I find that the suit and the Application should be struck out on that ground alone.

13. The 2nd Plaintiff has deponed that the 1st Plaintiff had the family land fraudulently sub-divided without his consent; that the 1st Plaintiff has sold several pieces of land and that he has no interest in the suit land which the 1st Respondent's husband bought.

14. Considering that the suit land is registered in the joint names of the Plaintiffs, and in view of the deposition of the 2nd Plaintiff that he has no objection with the 1st Defendant's claim, I find that the Plaintiffs have not established a prima facie case with chances of success.

15. For those reasons, I dismiss with costs the Plaintiffs' Application dated 19th January, 2016.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23RD DAY OF NOVEMBER, 2017.

O.A. ANGOTE

JUDGE