



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 180 OF 2016**

**WILLY MWOLOLO MUINDI .....PLAINTIFF**

**VERSUS**

**KASYOKA MBITHI NDUVA .....DEFENDANT**

**RULING**

1. In the Application dated 4<sup>th</sup> November, 2016, the Plaintiff is seeking for the following orders:

*a. That the Defendant/Respondent by himself, his agents and/or servants be restrained by an order of injunction from continuing to unlawfully encroach and trespass into parcel number Muputi/Kimutwa/226 and thereby grazing, cutting down trees and clearing vegetation therein or interfering with the said parcel in whatever manner pending the hearing and determination of this suit.*

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

2. The Application is based on the grounds that the suit land is registered in the name of the late Muindi Kitolo Kithana; that the Defendant has encroached on the suit land and that the injunctive order should issue.

3. In response, the Defendant deponed that he was born and raised on the suit land 70 years ago; that the suit land is his ancestral land; that his father and grandparents were buried on the land and that the Plaintiff has taken out letters of administration without his knowledge.

4. The advocates for the two parties filed their respective submissions.

5. According to the Plaintiff's advocate, the Defendant has not filed any claim seeking for the suit land; that the suit land is registered in the name of the deceased and that the Applicant has established a prima facie case with chances of success.

6. The Defendant's counsel submitted that the Plaintiff should have applied for a full grant so that the issue of ownership could be determined in the succession matter.

7. The Plaintiff has annexed on his Affidavit a certificate of search showing that the suit land is registered in the name of the late Muindi Kitolo.

8. In his Affidavit, the Defendant has stated that since the year 2008, the Defendant has been encroaching on the suit land.

9. On the other hand, the Defendant claims that the land in question is his ancestral land and that he has even buried his father on the land.

10. It would appear that the Plaintiff and the Defendant have had a long standing feud over the suit land.

11. Considering that the Plaintiff has not denied that indeed the Defendant's father and grandfather have been buried on the suit land, the issue of who is entitled to the land can only be determined either after the full trial or in succession proceedings.

12. In the circumstances, the most appropriate order to make is for the maintenance of the prevailing status quo pending the hearing and determination of the suit.

13. Consequently, the Application dated 4<sup>th</sup> November, 2016 is dismissed with no order as to costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 2<sup>ND</sup> DAY OF NOVEMBER, 2017.**

**O.A. ANGOTE**

**JUDGE**