



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ELC. NO. 120 OF OF 2012B**

**MRABU BAKARI MRABU ..... PLAINTIF**

**- VERSUS -**

**CLARA MEMA TSUMA.....DEFENDANT**

**JUDGEMENT**

[1] The simple facts of this matter is that the plaintiff applied and was granted a freehold title of land reference number 158 of section no. III Mainland North comprising of three decimal nought five (3.05) acres and was registered as owner on 22nd day of October 2009. He was issued with a title deed thereof. He later called a surveyor a Mr Zimmerlin who subdivided the said plots into plot numbers MN/III/6233, 6234, 6235 and 6236. The title deeds of those plots were produced in court.

According to the records produced by the defendant, a reply to D.C.Kilifi from Department of Lands dated 18th December 1998, referring to her application showed that she applied for a residential plot a Kilifi Township. It was recommended that she should be assisted. Though the letter talked about Kilifi Township, it would appear that all other documents referred to Plot LR/148/Section IV/MN.

She was eventually allocated Plot no. 158/III/MN for a term of 99 years from 1st September, 2010. She visited the land in February 2012 and found people constructing walls of the house. The people she found constructing were doing so on authority of the plaintiff.

The plaintiff and the defendant in this case have title for the same plot. This is what has brought the dispute now in court.

[2] The question for determination is, who is the legal owner of land reference number 158/III/between the plaintiff and the defendant?

The plaintiff was granted a leasehold title by the Government on 22nd day of October 2009. It is not argued that he was allocated the freehold interest through fraud, mistake, misrepresentation or through any unlawful means. He therefore became the defacto and the dejure owner since he had previously been in occupation and was later granted a freehold interest. The fact that the defendant had applied for this plot prior to that date is of no consequence to ownership by the plaintiff.

[3] This plot land reference 158/III/MN was not available for allocation by the Commissioner of Lands to the defendant as a leasehold for 99 years from 1st September 2010. The title issued to the defendant for the suit land on 26th May 2011 could not therefore confer any interests to the defendant. The only way the Commissioner of Land for the Government could get back land from the plaintiff was by

compulsory acquisition upon full compensation which was not the case here. This court therefore declares,

1. That land Reference 158/III/MN is owned by the plaintiff
2. The title held by the defendant for that property is null and void.
3. The Registrar of Titles shall cancel the defendants title to the same forthwith.
4. Each part shall bear its own costs.

**Dated and delivered in open Court this 30th day of October, 2014.**

**S. MUKUNYA**

**JUDGE**

**30.10.2014**

In the presence of;

Mr. Oddiaga Advocate for the plaintiff

Mr. Obara Advocate for the defendant