



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

OF KISII

Civil Case 164 of 2004

VINCENT MACHANI.....PLAINTIFF

-VERSUS-

LACTON OTAO MACHANI1ST DEFENDANT

JOEL MOSETI MACHANI2ND DEFENDANT

JUDGMENT

The plaintiff had three wives. His first wife died leaving him with two sons who are the defendants herein. He was left with two wives each of whom has children. He is the registered owner of three parcels of land: North Mugirango/Magwagwa 1/1030, North Mugirango/Magwagwa 1/1027 and North Mugirango /Magwagwa 1/1394. He said 1030 was given to him by his late father. He bought 1027 and 1394, although the 1st `defendant says his late mother contributed to the purchase before she died. She was buried on 1027. The 1st defendant states that his grandfather (the plaintiff's father) gave 1030 to him.

The defendants laid claim to the three parcels of land. The plaintiff came to court because the defendants, with the assistance of the local administration and without his authority or consent, descended on the three parcels of land and shared each into two parcels. One for themselves and one for the plaintiff. Parcels 1030 and 1394 have tea bushes on them planted by the plaintiff. He claims the defendants begun harvesting the tea bushes on the pieces they had taken. The suit was brought for their eviction from 1027 and 1394, and permanent injunction in respect of the two parcels. He stated that since 1030 is ancestral land, the defendants have an entitlement to a portion of it.

The defendants say they were forced to demand land because after their mother died the plaintiff and his second wife have subjected them to a lot of suffering. Their mother was cultivating 1027. However, the plaintiff is harvesting all produce (including tea) on the piece

and taking with him all proceeds. They were forced to seek the assistance of the provincial administration to parcel out part of the lands above.

It is not in dispute that each defendant is above 18.

The 1st defendant testified that following his mother's death, the plaintiff initially gave them half of 1030 and the whole of 1027. He gave 1394 to his second wife. He however changed his mind about this, and that is why they reported him to the provincial administration.

The position in law is that the plaintiff is the registered proprietor of the three parcels of land and *prima facie*, under sections 27 and 28 of the Registered Land Act (Cap.300), he has absolute and indefeasible claim to the parcels. When he eventually passes on, the defendants and all their siblings can seek to inherit the parcels and his other properties. For the time being, the defendants must hold their claim. It is good enough that their father has allowed them on 1027 and he is saying they have a claim to half of 1030. The claim is, however, yet to crystallize. Their actions in invading and parceling out parcels 1027 and 1394 to themselves and harvesting the tea crops thereon are illegal and have to be restrained.

In conclusion, the plaintiff's suit succeeds. However, since this is a family dispute, I ask that each side bears its own costs.

Dated, signed and delivered at Kisii this 27th day of January, 2010.

A.O.MUCHELULE

JUDGE

27/1/2010

Before A.O.Muchelule-J

Court clerk-Bibu

Mr. Onyancha for plaintiff

Plaintiff-present

Defendants-present

A.O.MUCHELULE

JUDGE

27/1/2010