



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Suit 445 of 2005**

**PETER MUTISYA MUTUA.....PLAINTIFF**

**VERSUS**

**JOHN IRUNGU MUSOMI.....1<sup>ST</sup> DEFENDANT**

**DAVID MUNIA MUSOMI.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

This claim arises out of a dispute over the ownership of that parcel of land known as Plot No.1892 situate at Makima Sub-location Mbeere District. In his plaint the plaintiff avers that he is the owner of the suit land and that the defendants have invaded the suit land and deprived him of its use and peaceful possession.

The defendants were served with summons but failed to enter appearance and on application, the plaintiff obtained interlocutory judgment. The matter came before me for formal proof.

The plaintiff in this evidence told the court that the suit land belonged to one PAUL NDETO who is now deceased. He produced the letter of allotment for the suit premises being Plot No. 1892 in Mwea Scheme Embu District. The letter bears the name of Paul Ndeto as the allottee. The said Paul Ndeto has since died and that he purchased the suit land from the family of the late Ndeto but he did not have the original Sale Agreement.

On 15<sup>th</sup> October 2004 the two defendants JOHN IRUNGU MUSOMI and DAVID MUWA MUSOMI invaded the suit land and drove him out.

The letter of allotment produced by the plaintiff which as said bears the name of Paul Ndeto indicate that the suit land is Government land on lease whose usage is subject to the basic land usage Rules as contained under Section 48(1) of the Agriculture Act Cap 318. The same is not subject for sale. The allottee who is not willing to use it can only surrender the same to the Government for reallocation. Therefore any purported Sale Agreement is null and void and not capable of being enforced.

Secondly the said alleged intruder are sons of the late Paul Ndeto who were residing on the suit land so that they have a superior right to the suit land to that of the plaintiff. Thirdly the late Ndeto did not sell the suit land to the plaintiff nor was he given vacant possession. Even assuming the suit land was available for sale since the allottee had died the purported seller had to obtain letters of administration to enable him to deal with the estate of the late Paul Ndeto. Although this suit came for hearing by way of formal proof the plaintiff has failed to formally proof his claim and the same must fail.

The plaintiff's suit is dismissed with no order as to costs.

Dated and delivered at Nairobi this 23<sup>rd</sup> day of March 2006.

J.L.A. OSIEMO

JUDGE