



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 144 OF 2014**

MOSES ABUTO .....1<sup>ST</sup> PLAINTIFF

FELISTA NJERI NGURE.....2<sup>ND</sup> PLAINTIFF

FRANCIS MBAO.....3<sup>RD</sup> PLAINTIFF

JULIANA MUTHUE MUGAMBI.....4<sup>TH</sup> PLAINTIFF

KIMANI MAGAMBO.....5<sup>TH</sup> PLAINTIFF

FELISTA NDUNGE.....6<sup>TH</sup> PLAINTIFF

KALONDU NYAMBO.....7<sup>TH</sup> PLAINTIFF

RICHARD NGAU MWANGANGI.....8<sup>TH</sup> PLAINTIFF

ZADOK ORIENO.....9<sup>TH</sup> PLAINTIFF

BONIFACE MUTUNGA.....10<sup>TH</sup> PLAINTIFF

JOHN MULA NZUMA.....11<sup>TH</sup> PLAINTIFF

JACKSON MUTUKU KAVOI.....12<sup>TH</sup> PLAINTIFF

FREDRICK MUTHYA MULIKA.....13<sup>TH</sup> PLAINTIFF

THOMAS MUNYAO MUMO.....14<sup>TH</sup> PLAINTIFF

**VERSUS**

**MUKA MUKUU FARMERS CO-OPERATIVE**

**SOCIETY LIMITED.....DEFENDANT**

**JUDGMENT**

**Introduction:**

1. In the Plaint dated 27<sup>th</sup> October, 2014, the Plaintiffs averred that on diverse dates between the year 2001 and 2003, they purchased plots that were curved from land parcel number 10967 owned by the Defendant.
2. According to the Plaintiffs, they purchased the suit properties pursuant to an Annual General Meeting of the Defendant of 23<sup>rd</sup> September, 1991; that they have developed the said parcels of land and that they were in continuous peaceful possession of the suit properties until 27<sup>th</sup> September, 2014 when they were summoned by the Defendant.

3. The Plaintiffs averred in the Plaint that at the meeting, they learnt that the Defendant intended to take their land and that the Defendant should be restrained permanently from interfering with their quiet possession and occupation of land parcel number 10967 and the resultant plots. The Plaintiffs have also sought for General damages for the violation of their rights.

4. In its Defence and Counter-claim, the Defendant averred that the area where the Plaintiffs are laying claim was set aside and donated for public utilities, specifically a police station and that the Defendant never resolved to sell the suit properties as alleged by the Plaintiffs.

5. In the Counter-claim, the Defendant averred that the Plaintiffs illegally acquired the suit properties between the years 2001 and 2003; that the Defendant never sold the suit properties to the Plaintiffs and that the Plaintiffs should be restrained from laying claim over L.R. No. 10967. The Defendant also prayed for an order that the Plaintiffs do vacate the suit property.

#### **The Plaintiffs' case:**

6. In his evidence, the 1<sup>st</sup> Plaintiff, PW1, informed the court that at the Annual General Meeting of 28<sup>th</sup> September, 1991, it was resolved that parcel of land L.R. No. 10967 (*the suit property*) should be sold out to the members and that members purchased plots measuring 40 x 100 feet at KShs. 30,000.

7. It was the evidence of PW1 that between the years 2001 and 2003, the Plaintiffs purchased their respective plots from the Defendant; that it was a term of contract that one could not be shown his/her plot until they pay KShs. 10,000 and that the Plaintiffs paid the said amount together with the survey fees.

8. PW1 stated that prior to the purchase of the suit properties, all the interested members were shown a map indicating the location of their land on the ground; that several members developed their respective plots and that on 3<sup>rd</sup> October, 2014, the Defendant's officials convened a meeting which they (*the Plaintiffs*) attended.

9. It was the evidence of PW1 that they refused to be addressed by the Defendant's officials individually; that they later on learnt that the Defendant intended to sell their plots to unknown persons and that the Plaint should be allowed.

10. In Cross-examination, PW1 stated that he was not a member of the Defendant; that he only bought a portion of the suit property; that the plot he bought was plot number 40 measuring 40 x 100 feet and that his name is in the allocation letter.

11. PW1 stated that they never entered into Sale Agreements with the Defendant; that he was aware about the task force that was set up by the Ministry of Lands and that he was not aware that the inquiry found that the suit property was acquired fraudulently.

12. PW1 denied that the land they purchased was meant for public utilities. It was the evidence of PW1 that title deeds had not been issued to the people who bought land from the Defendant and that they are not claiming the entire land reference number 10967. PW1 denied of any knowledge of the Minutes of 16<sup>th</sup> May, 1984 that set aside land for public utilities.

13. PW2 informed the court that he is one of the Plaintiffs in this matter. According to PW2, he is a member of the Defendant; that he purchased two plots within L.R. No. 10967 measuring 40 x 100 feet at KShs. 30,000 per plot and that he chose his two plots from the map that he was given by the Defendant's officials.

14. It was the evidence of PW2 that he put up a commercial plot on the plots he bought and that he has been utilizing the said land for over twelve (12) years. It was the evidence of PW2 that in the year 2014, he learnt that the Defendant intended to sell the land he had purchased to third parties.

15. In Cross-examination, PW2 stated that he is a member of the Defendant "*because his parents are members*", that he has never obtained a membership card and that he bought his land being plot numbers 68 and 72 from the Defendant.

16. It was the evidence of PW2 that he entered into a Sale Agreement dated 14<sup>th</sup> March, 2002 with the Defendant; that the Agreement does not indicate the plot that he purchased and that his claim is in respect of a portion of the land.

17. PW3 stated that he is one of the Plaintiffs; that he was born in Mukaa Mukuu and that his parents were members of the Defendant. It was the evidence of PW3 that he bought plot number 69B from the Defendant.

#### **The Defendant's case:**

18. The Defendant's Chairman, DW1, informed the court that the dispute herein is in respect of land known as L.R. No. 10967; that a portion of L.R. No. 10967 was set apart by the Defendant for public utilities and specifically to build a police station and that the Defendant did not sell the said portion of the land to the Plaintiffs.

19. It was the evidence of DW1 that the Plaintiffs are not members of the Defendant; that the Inquiry Report of October, 2008 found that there were illegal and fraudulent activities in the acquisition and sale of L.R. No. 10967 by people impersonating the officials of the Defendant and that the Defendant has never sold any part of its land to the Plaintiffs.

20. In Cross-examination, DW1 stated that it is only the 12<sup>th</sup> and 13<sup>th</sup> Plaintiffs who are members of the Defendant; that he has read the Minutes of the Defendant of 28<sup>th</sup> September, 2019 and that the Plaintiffs purchased the suit properties without the resolution of the

Defendant at the General Meeting.

21. According to DW1, the Defendant set aside 27 acres of the suit property for public utilities vide its Minutes of 16<sup>th</sup> May, 1984. The witness denied that there was an Annual General Meeting on 23<sup>rd</sup> September, 1991. Both the Plaintiffs and the Defendant's advocates filed submissions which I have considered.

**Analysis and findings:**

22. In the Plaint dated 27<sup>th</sup> October, 2014, the Plaintiffs are seeking for the following orders:

***a. A permanent injunction barring the Defendant either by itself, agents, servants and or persons acting under its authority, control or supervision from interfering with the quiet possession and occupation of the Plaintiffs on land parcel number 10967 and resultant plots;***

***b. Declaration that the Defendant in calling for the meeting on 3<sup>rd</sup> October, 2014 and subsequently using coercion, force or intimidation through reliance of the members of the Provincial Administration and police seeking to compel the Plaintiffs to relinquish their ownership or interest in the resultant plots severed from land parcel number 10967 was a violation of their right to property under Article 40 of the Constitution;***

***c. General damages for violation of the Plaintiffs' rights;***

***d. Costs of this suit;***

***e. Any other relief that the court may deem just to grant.***

23. The Plaintiffs' case is that they purchased portions of L.R. No. 10967. According to the evidence of PW1, PW2 and PW3, the said purchase was done after the Defendant passed a resolution to sell the land. It was the evidence of PW1, PW2 and PW3 that they purchased the said land from the Defendant although they were not members of the Defendant.

24. The Plaintiffs produced several documents in evidence. PW1 produced PEXB1 which is undated. The said document is not in respect of any particular plot, other than showing that a payment of Kshs. 20,000 and Kshs. 10,000 was done on 14<sup>th</sup> March, 2002 and 26<sup>th</sup> March, 2002 respectively.

25. PW1 produced three letters dated 14<sup>th</sup> March, 2002, 5<sup>th</sup> May, 2003 and 7<sup>th</sup> February, 2002 addressed to the 7<sup>th</sup> Plaintiff, 4<sup>th</sup> Plaintiff and 14<sup>th</sup> Plaintiff respectively. The said letters were purportedly authored by the three officials of the Defendant.

26. The three letters "offered" the three Plaintiffs land measuring 40 x 100 square feet each. However, the said letters of offer did not specify the plot numbers that were offered for sale, neither did they mention the suit property.

27. The Plaintiffs also produced numerous receipts purportedly issued by the Defendant. The said receipts do not have the narration of the specific land that they were issued in favour of.

28. Although the Plaintiffs, some of who are not members of the Defendant, stated that they purchased specific plots hived from L.R. No. 10967, the receipts they produced in evidence did not support that allegation. Indeed, the Plaintiffs did not produce in evidence any Sale Agreement between themselves and the Defendant contrary to the provisions of Section 3(3) of the Law of Contract Act which states as follows:

*"(3) No suit shall be brought upon a contract for the disposition of an interest in land unless-*

*(a) the contract upon which the suit is founded-*

*(i) is in writing;*

*(ii) is signed by all the parties thereto; and*

*(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party;*

*Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the Auctioneers Act (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust."*

29. The three Plaintiffs in this matter did not adduce evidence to show the specific plots that they bought. Indeed, the Plaintiffs' evidence on how they purchased the alleged plots was inconsistent and was not supported by documents at all. The rest of the Plaintiffs neither testified nor gave to the three Plaintiffs any written authority to plead on their behalf.

30. Considering that the Plaintiffs did not produce an Agreement of Sale duly signed by themselves and the Defendant, showing the precise plots that they purchased, and evidence of the payments they made for those plots, it is my finding that the Plaintiffs did not prove their case on a balance of probabilities.

31. For those reasons, I dismiss the Plaintiffs' Plaint dated 27<sup>th</sup> October, 2014 with costs and allow the Defendant's Counter-claim dated 12<sup>th</sup> March, 2018 as follows:

*a. A permanent and perpetual injunction be and is hereby issued as against the Plaintiffs, their agents and or trustees from trespassing claiming interest or ownership over the whole or part of the suit property Parcel No. 10967 or any other resultant plots therein.*

*b. A declaration be and is hereby issued that the Plaintiffs are not the legal owners of the suit property, are in illegal possession and should therefore vacate immediately.*

*c. An order that the Plaintiffs do vacate the suit property is hereby issued.*

*d. Costs of the suit to be paid by the Plaintiffs jointly and severally.*

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 29<sup>TH</sup> DAY OF JANUARY, 2021.**

**O.A. ANGOTE**

**JUDGE**