



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MACHAKOS
ELC. CASE NO. 204 OF 2018

MUASA KIOKO.....PLAINTIFF

VERSUS

COSMAS KALOKI1ST DEFENDANT

LUKENYA RANCHING & FARMING CO-OPERATIVE

SOCIETY LIMITED.....ND DEFENDANT

JOSEPH MUASYA.....3RD DEFENDANT

JUDGMENT

1. In the Complaint dated 22nd October, 2018, the Plaintiff has averred that he is the lawful owner of land known as Mavoko Town Block 3/3474 the same having been allocated to him by the 2nd Defendant.
2. The Plaintiff has further averred that in the year 2004, he executed the necessary forms of ownership which he submitted to the 2nd Defendant through the 3rd Defendant and that the 2nd and 3rd Defendants, through fraud or mistake, processed the title of the suit property in the name of the 1st Defendant.
3. The Plaintiff is seeking for the following orders in the Complaint:
 - a. A declaration that the Plaintiff is the rightful owner of all that parcel of land known as Mavoko Town Block 3/3474.
 - b. An order directing the Lands Registrar, Machakos to cancel the names Cosmas Kaloki Musyoka in the register of Title No. Mavoko Town Block 3/3474 and replace it with Muasa Kioko.
 - c. A permanent injunction restraining the Defendants, their servants, relatives or agents from interfering with the Plaintiff's quiet possession and enjoyment of L.R. No. Mavoko Town Block 3/3474.
 - d. Cost of this suit.
4. Although the Defendants were served with the Complaint, they neither entered appearance nor filed a Defence.
5. The Plaintiff, PW1, informed the court that he bought land in Mitaboni area, Lukenya and that he has put up a home on the said land which is occupied by one of his wives. According to PW1, he was allocated parcels of land known as Mavoko Town Block 3/2362; 3474; 1469 and 689 and that the suit property is Mavoko Town Block 3/3474.
6. According to the Plaintiff, he submitted his documents to the 2nd Defendant for processing of the title documents and that when titles were issued to other proprietors, he discovered that he was not amongst them. It was the evidence of PW1 that when he conducted an official search in the year 2016, he discovered that the suit property had been registered in favour of the 1st Defendant.
7. The Plaintiff produced in evidence a copy of the search for parcel of land known as Mavoko Town Block 3/2374.

8. The search shows the suit property was registered in the name of the 1st Defendant on 11th August, 2006. The Plaintiff also produced in evidence a letter dated 27th May, 2011 by the 2nd Defendant in which it confirmed that indeed the suit property belonged to the Plaintiff.

9. In addition to the letter dated 27th May, 2011, the Plaintiff also produced in evidence the copy of his membership card which was issued by the 2nd Defendant on 9th March, 1975. The said card shows that the Plaintiff was member number 724 with the 1st Defendant.

10. The evidence produced by the Plaintiff shows that he was allocated the suit property by the 2nd Defendant. On the other hand, the 1st Defendant did not file a Defence or testify to inform the court the process he followed to acquire a Title Deed for parcel of land known as Mavoko Town Block 3/3774 in 2016, and why he has never taken possession of the said land.

11. Section 26(1) of the Land Registration Act provides that a Certificate of Title may be revoked on the ground of fraud, misrepresentation or where a title is acquired illegally, unprocedurally or through a corrupt scheme.

12. On the evidence placed before me, it is my finding that the title that was issued to the 1st Defendant, Cosmas Kaloki, was procured fraudulently or by misrepresentation.

13. For those reasons, it is my finding that the Plaintiff has proved his case on a balance of probabilities. The Plaintiff's suit is allowed as follows:

a. A declaration be and is hereby issued that the Plaintiff is the rightful owner of all that parcel of land known as Mavoko Town Block 3/3474.

b. An order be and is hereby issued directing the Lands Registrar, Machakos to cancel the names Cosmas Kaloki Musyoka in the register of Title No. Mavoko Town Block 3/3474 and replace it with Muasa Kioko.

c. A permanent injunction be and is hereby issued restraining the Defendants, their servants, relatives or agents from interfering with the Plaintiff's quiet possession and enjoyment of L.R. No. Mavoko Town Block 3/3474.

d. The 1st Defendant to pay the costs of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 11TH DAY OF JUNE, 2021.

O. A. ANGOTE

JUDGE