



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 39 OF 2019

PRISCILAR MUSYAWA MWANIA MUTHEKE.....PLAINTIFF

VERSUS

THE LAND REGISTRAR MACHAKOS.....1ST DEFENDANT

THE HON. ATTORNEY GENERAL.....2ND DEFENDANT

JUDGMENT

1. In the Complaint dated 4th April, 2019, the Plaintiff averred that she is the registered proprietor of land situated in Lukenya, Machakos County known as Mavoko Town/Block 3/4952 measuring approximately 6.07 Ha; that parcel number 4952 emanated from parcel number 2403 and that prior to a Title Deed being issued, she had on 16th February, 2005 disposed 5 acres of the 20 acres to one Bernadatta Kanini Mutuku.
2. The Plaintiff has averred that after being issued with a Title Deed, she proceeded to complete the sale of the 5 acres to Bernadatta Kanini Mutuku whereafter parcel of land known as Mavoko Town/Block 3/2403 was sub-divided into parcels number Mavoko Town/Block 3/4951 measuring 2.02 Ha (5 acres) in the name of Bernadatta Kanini Mutuku and Mavoko Town/Block 3/4952 measuring 6.07 Ha (15 acres) in her name.
3. It is the Plaintiff's case that all was well until the year 2012 when she lost the original Title Deed to the suit property; that the issue of the loss of the original Title Deed was gazetted in Gazette Notice No.11072 of 10th August, 2012 and that she later discovered that the green card in respect of her land was missing from the Land's Registry.
4. The Plaintiff is seeking for the following orders: A declaration that he is the lawful proprietor of land known as Mavoko Town/Block 3/4952; an order for the 1st Defendant to reconstruct and/or restore the register for parcel of land known as Mavoko Town/Block 3/4952 and the 1st Defendant to issue her with the original Title Deed for the suit property.
5. Although the Attorney General entered appearance on behalf of the 1st Defendant he did not file a Defence. The matter proceeded as undefended.
6. The Plaintiff, PW1, appeared before me on 10th July, 2019 and reiterated the averments in the Complaint. The said averments have been summarized in the preceding paragraphs. PW1 also produced in evidence the copies of the Title Deeds for parcels of land numbers Mavoko Town/Block 3/2403, 4951 and 4952; the copies of the official searches for the said parcels of land and gazette notice number 11072 dated 10th April, 2012.
7. It is not in dispute that the Plaintiff was the registered proprietor of parcel of land number Mavoko Town/Block 3/2403 measuring approximately 8.090 Ha. According to the copy of the Title Deed, the Plaintiff was registered as the owner of the land on 15th September, 2005. A Title Deed was issued in her favour on 21st September, 2005.
8. The Plaintiff's produced in evidence a Sale Agreement dated 16th February, 2005 between her late husband and Bernadatta Kanini Mutuku. According to the said Agreement, the Plaintiff's late husband sold to Bernadatta a portion of plot number 1595 within Lukenya. When the Title Deed for Mavoko Town/Block 3/2403 was issued to the Plaintiff on 15th September, 2005, the said land was sub-divided into Mavoko Town/Block 3/4951 and 4952.
9. PW1 informed the court that the Title Deed for Mavoko Town Block 3/4952 that was issued in her favour got lost. PW1 produced in evidence the Abstract from police showing the loss of the Title Deed. Indeed, the 1st Defendant caused the loss of the Title Deed to be

gazetted in Gazette Notice No.11072 dated 10th August, 2012.

10. The 1st Defendant having caused the gazettelement of the loss of the Title Deed, he has no reason to refuse to issue to the Plaintiff a Title Deed. Indeed, the 1st Defendant has not given any reason why he has not issued to the Plaintiff the Title Deed despite having gazetted the loss of the Plaintiff's Title Deed in the year 2012.

11. For the reasons I have given above, I find the Plaintiff has proved her case on a balance of probabilities. The Plaintiff's Plaint dated 4th April, 2019 is therefore allowed as follows:

a. A declaration be and is hereby issued that the Plaintiff is the lawful proprietor of all that parcel of land known as Mavoko Town/Block 3/4952.

b. An order be and is hereby issued for the 1st Defendant to reconstruct and/or restore the original register for Mavoko Town/Block 3/4952 with the opening date as 27th September, 2006 with the Plaintiff as the registered owner after sub-division of the original Title Deed Mavoko Town Block 3/2403 in accordance with the Title Deeds for Mavoko Town/Block 3/2403 and Mavoko Town/Block 3/4952 held by the Plaintiff.

c. An order for the 1st Defendant to issue the Plaintiff with a new Title Deed for Mavoko Town/Block 3/4952 is hereby issued.

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

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 31ST DAY OF JANUARY, 2020.

O.A. ANGOTE

JUDGE