



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MAKUENI

ELC CASE NO.04 OF 2018

BENARD KING'OLA MUTUNGI

PAUL M. MUTUNGI (DECEASED).....PLAINTIFFS

-VERSUS

NGUSYE MUTUNGI.....1ST DEFENDANT

THE CHAIRMAN MALILI RANCHING CO. LTD.....DEFENDANT

J U D G E M E N T

1. The Plaintiff commenced this suit by way of a plaint dated 05th January, 2018 and filed in court on 24th January, 2018. He prays for judgement against the Defendants jointly and severally for: -

i. Revocation and/or Annul the title deed issued to the 1st defendant.

i. Cost of this suit and interest.

iii. Any other relief the court may deem fit and jest.

2. He has averred in paragraphs 4, 6 and 12 of his plaint that before his father died on 25th March, 2006, the latter was the registered owner of all that parcel of land at Malili being agricultural plot balloted 015 and commercial plot balloted 1941, that he has built his home on agricultural plot balloted 015 and carried farming on it and that he has the legal rights over the suitland being the property of his father.

3. His claim is denied by the 2nd Defendant vide its statement of defence dated 08th March, 2018 and filed in court on 09th March, 2018.

4. The 2nd Defendant has averred in paragraphs 3, 6, 7, 8 and 9 of its defence that the 1st Defendant is the legal owner of agricultural plot number 015 Malili Ranch Company Limited by virtue of her membership to the said Company, that the late Mutungi Wambua transferred his share to the 1st Defendant prior to his death and the change was procedurally and lawfully effected in the 2nd Defendant's official record, that plot number 015 is the property of the 1st Defendant and that the Plaintiff has no proprietary rights or beneficial interest in the said property, that the Plaintiff's suit does not raise any reasonable cause of action and prays for the same to be dismissed or struck out with costs and that the suit is non starter, incompetent and fatally defective in that the Plaintiff lacks the requisite locus standi to institute the suit for want of letters of administration and notice is given that a preliminary objection shall be raised to have the entire suit struck out in limine.

5. The 1st Defendant though served with notice to enter appearance and to file her defence failed to do so as can be seen from the affidavit of service sworn at Machakos on 09th April, 2018 and filed in court on even date.

6. Hearing of the Plaintiff's case proceeded in the absence of the 2nd Defendant and his advocate who though served with a hearing notice failed to present themselves for hearing.

7. On the 29th March, 2018, the Plaintiff filed a reply to the 2nd Defendant's defence the same being dated 19th March, 2018.

8. During the hearing of the Plaintiff's case, he adopted his statements dated 05th January, 2018 as his evidence. He went on to produce five documents in his list of documents dated 11th June, 2018 as P.Exhibit Nos.1 to 5 respectively. The documents in question were allotment of

agricultural commercial plot (P.Exhibit No.1), letter from the area chief addressed to the Chairman of Malili Ranch Co. Ltd dated 09th July, 2012 (P.Exhibit No.2), undated transfer deed (P.Exhibit No.3), certificate of death of Mutungi Wambua (P.Exhibit No.4), structured Kamba/English translated will written by Mutungi Wambua dated 08th July, 2004 (P.Exhibit No.5).

9. Briefly, his evidence was that the Plaintiff is the son of Mutungi Wambua (deceased) who was the registered owner of agricultural plot number 015 and commercial plot number 1941. That upon the demise of the deceased, the 1st Defendant caused the change of name in the share certificate and allotment letter from that of the deceased to herself. The Plaintiff further states that the Defendant caused the aforementioned changes to be carried out without his knowledge.

10. It is also the Plaintiff's case that he resides in the agricultural plot number 015. He accuses the 1st Defendant of trying to stop him from utilizing his share of the land in question as a dependant and a beneficiary of the estate of his deceased father.

11. In his submissions the Plaintiff has urged the Court to dismiss the 2nd Defendant's defence as no evidence was led in support of the same and proceed to enter judgement in his favour.

12. I have read the evidence on record and it is clear to me that the Plaintiff is litigating over the estate of his deceased father. This would explain why the Plaintiff who had started to testify on 31st July, 2018 successfully sought to be stood down so that he could apply for the necessary grant of letters of administration to enable him to sustain this suit.

13. On 14th February, 2019 the Plaintiff was granted a chance to regularize his pleadings which chance he did not utilize. He instead filed a copy of letters of administration intestate issued on 06th August, 2019 in succession cause No.49 of 2018 by the Senior Principal Magistrate's Court at Makueni. The grant in question does not permit him to file and prosecute the instant suit in the absence of grant of letters of administration ad litem. The Plaintiff's case is not helped by his document marked as P.Exhibit No.5 which he says is a will by his father written in Kamba language and translated into English as the two would have been appropriate in a succession cause.

14. The Plaintiff has by implication of his pleadings and his evidence indicated that the 1st defendant unprocedurally had the share certificate in respect of the suit property changed in her name. That would connote fraud. It is trite law that fraud must not only be pleaded but must also be particularized. The plaintiff herein has failed to do so.

15. From the foregoing, it is clear that the Plaintiff's suit is incompetent and fatally defective for lack of the requisite locus standi. It must therefore fail. In the circumstances, I hereby proceed to dismiss it with no orders as to costs.

Signed, Dated and Delivered at Makueni via email this 29th day of **May, 2020**.

MBOGO C. G.,

JUDGE.

Mr. G. Kwemboi – Court Assistant