



**REPUBLIC OF KENYA**

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

**ELC NO. 10 OF 2007**

**JOSEPH MUTURA MUGAMBI.....PLAINTIFF**

**VERSUS**

**RUTERE MWIRIA & 20 OTHERS.....DEFENDANT**

**JUDGMENT**

1. This suit was filed vide plaint dated 15/3/2007 where the plaintiff averred that he has been the sole proprietor of the land parcel No. 450 Amungeti "b" Adjudication Section. The defendants are his neighbors and have unlawfully and wrongfully invaded his land. They have been violently chasing away his workers and member of the family and are therefore trespassers on the land. The defendants have been warned and cautioned by the authorities but persist in their unlawful actions and behavior. As a result, the plaintiff has suffered loss and damage. The plaintiff had therefore sought the following orders;

- a. A declaration that parcel no. 450 Amungeti "B" is the property of the plaintiff.*
- b. An order of injunction restraining each of the defendants, their servants and/or agents from entering remaining or otherwise interfering with the plaintiff's use and possession of land parcel No. 450 Amugeti "B".*
- c. An order of eviction against each of the defendants.*
- d. Damages and mesne profits.*
- e. Cost and interest at court rates.*

2. On 12.4.2007, a memorandum of appearance was filed for the defendants, while the statement of defence was filed on 15.5.2007. Years later, the defendants were allowed through a court order of 16.9.2014 to amend their defence to include a counter claim of which the defence and counterclaim were deemed as properly filed upon payment of the apposite filing fees. They averred that they should not be evicted from the suit land which they had lived on for over hundred years and have buried their great great grandparents there. The defendants further pleaded that the plaintiff is a land grabber who has been using his wealth to influence, corrupt adjudication officers and land committees to steal their ancestral land and deprive them of their constitutional right to own property.

3. On 27.7.2015, the plaintiff's side was given a go ahead to fix the matter for hearing notwithstanding the non-compliance with order 11 on the part of defence. This order was made against a background where the court had noted that defence advocate left the court room without explanation minutes before the matter was called out. Thereafter the defence attempted to introduce documents and statement of witnesses. However, vide this court's ruling of 27.9.2017, the court stated that only documents and statements filed by the date of 27.7.2015 would be accepted in court. The defence sought to have this ruling reviewed of which vide this court's ruling of 15.5.2019 and 7.10.2019, the court declined the prayer for review and went ahead to mark defence case as closed. Thus the matter has proceeded as an undefended claim.

4. Meanwhile, the initial plaintiff died and was substituted with his wife Rael Rigiri Mutura who also died and substitution again was done. The current plaintiff is John Munene Mutura.

5. **PW1 Rael Rigiri Mutura** in her testimony told the court that Joseph Mutuura Mugambi is her husband who died on 11/9/2009 during the pendency of this case. She was later appointed to represent him as she was granted letters of administration. The suit land belongs to her husband as the land originally belonged to his clan called Thaana. Her husband did many cases over the land during the adjudication period and won all of them. After the process of adjudication was completed, the land was recorded in the name of her husband. The defendants here are not members of their clan as they belong to a clan called Ncheme. Her husband did several cases involving different parcels of land and after winning all the cases the parcels were combined to form No. 450. The defendants have refused to vacate the land and have not appealed against the decision of the Arbitration Board to the high court or to the Minister in charge of land matters.

6. During the trial, pw1 stated that some defendants have left the land particularly the 1<sup>st</sup> defendant (Rutere Mwiria).

7. In support of her case, pw1 had produced the documents in her list dated 17.2.2014 as her exhibits 1-6 respectively. The documents are; 1) Notice of establishment of Amungeti "B" Adjudication Section, 2) Consent to file the suit, 3) Award of the land by the clan elders dated 28.8.1993, 4) Proceedings and the Award of the Committee, 5) Proceedings and award of the Arbitration board and 6) Letters of confirmation of ownership dated 15.6.2007, 18.7.2013 and 24.01.2014.

8. The plaintiff in his submissions argued that in Maua CMCC No. 195 of 2013, the plaintiff had sued the 12<sup>th</sup> defendant seeking exhumation of the body of his son, the court found that the land belongs to the plaintiff and granted the orders as pleaded. The defendants have never challenged the decision of the arbitration board awarding the land to the plaintiff. There was no appeal against the award as provided by section 29 of the Adjudication Act meaning that the plaintiff remains the owner of the land.

9. The defendants in their submissions argued that they had a similar matter at Maua Law courts vide Case No. 186 of 2006 where the plaintiff voluntarily withdrew the case. It was their argument that the plaintiff unlawfully caused their land parcels to be consolidated into LR parcel No. 450 Amungeti B adjudication section which is their ancestral land.

10. They also argued that the plaintiff was never properly substituted on the ground that the grant obtained by the plaintiff's son John Munene Mutura was in relation to Maua Chief Magistrate Case No. 45 of 2018. The plaintiff and the defendant had a claim before the arbitration board and from the case it was clear that the defendants belonged to the Nceme Clan and the plaintiff from the Thaara clan and that the Thaara clan killed a member of Nceme clan and the Thaara Clan compensated them with the suit land.

### **Analysis and Determination**

11. I have considered the record, the evidence and the submissions of the parties. The issue for determination is **whether the plaintiff was properly substituted, whether plaintiffs claim should be allowed or whether defence counterclaim should be allowed.**

12. On the issue of substitution of the plaintiff, this court pronounced itself in paragraph 4 of the ruling dated and delivered on 7.10.2019. I will belabour on this point no more.

13. On the issue as to who is entitled to the suit land, it is apparent that the dispute was in the litigation arena of adjudication culminating in the decision of the Arbitration board in favour of the plaintiff. The defendants had argued that the suit land is ancestral land on the basis that it was owed to their clan "Nceme" by the "Thaana" clan. It must be noted that the courts have no mandate to **ASCERTAIN the rights and interests** in land in the adjudication process as that is the preserve of the adjudication bodies set out in the Land Adjudication Act and the Land Consolidation Act. **Okongo J in Tobias Achola Osidi & 13 Others vs. Cyprianus Otieno Ogola H.C.C. NO 4 OF 2011 KISII** had aptly captured this issue of ascertainment of rights and interest in land as follows;

***"It follows from the foregoing that once an area has been declared an adjudication area under the Act, the ascertainment and determination of rights and interest in land within the area is reserved by the law for the officers and quasi-judicial bodies set up under the Act....."***

14. Thus the court can come in to ensure that the process is conducted in accordance with the law and to ensure that the decisions of the adjudication bodies are enforced. In this case, the matter was heard and determined by the arbitration board which found that the suit land belonged to the plaintiff herein. There were no objection proceedings before the Adjudication officer and no appeal was lodged to the minister. Thus the decision of the Arbitration board still stands. The documents availed by the plaintiff as exhibits 6 clearly show that the suit land Parcel no. 450 in Amungeti B is registered in the name of Joseph Mutura Mugambi, the initial plaintiff.

15. In the circumstances, I find that the plaintiff has proved that he is the owner of the suit property. However, the claim of mesne profits was not articulated during the trial and the same is dismissed. The counterclaim of the defence is found to have no merits. On the issue of costs, I find that only 1<sup>st</sup> defendant Rutere Mwiria appears to have completely left the land as per the evidence of pw1, hence I will not condemn him to pay costs.

### **Final orders**

16. The plaintiff's case is allowed in the following terms;

**I. It is hereby declared that Parcel no. 450 Amungeti "B" is the property of the plaintiff.**

**II. An order of injunction is hereby issued restraining each of the defendants, their servants and/or agents from entering remaining or otherwise interfering with the plaintiff's use and possession of land parcel No. 450 Amungeti "B".**

**III. An order of eviction against each of the defendants is hereby issued.**

**IV. The defendants except 1<sup>st</sup> defendant are condemned to pay cost of the suit with interest at court rates.**

**DATED, SIGNED AND DELIVERED AT MERU THIS 21<sup>ST</sup> DAY OF MAY, 2020**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**

**ORDER**

The date of delivery of this ruling was given to the parties at the conclusion of the hearing and by a fresh notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17<sup>th</sup> March, 2020 and published in the Kenya Gazette of 17<sup>th</sup> April 2020 as Gazette Notice no.3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

**HON. LUCY N. MBUGUA**

**ELC JUDGE**