



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 62 OF 2018

JOHN KIOKO MUTUA.....1ST PLAINTIFF

SARAH NZEMBI MUTUA.....2ND PLAINTIFF

VERSUS

JOHN WAMBUA KILONZO.....1ST DEFENDANT

MICHAEL WAMBUA MUTISYA

alias "MAYELO" alias "MWAMULI"2ND DEFENDANT

GEORGE KING'ORI.....3RD DEFENDANT

JACKSON MUTISO KITONYI.....4TH DEFENDANT

PHILIP MUTUA.....5TH DEFENDANT

JOHN MASILA.....6TH DEFENDANT

JACKSON KIOKO NZEKI.....7TH DEFENDANT

PIUS MUSEMBI.....8TH DEFENDANT

SILA NYANZI.....9TH DEFENDANT

MAKUTHU SILA.....10TH RESPONDENT

NEW FARM WELFARE SOCIETY.....11TH RESPONDENT

MLOLONGO BROTHERS ASSOCIATION..12TH RESPONDENT

JUDGMENT

1. In the Plaintiff dated 29th March, 2018, the Plaintiffs averred that together with the other family members, they were registered as the proprietors of three (3) parcels of land, to wit, L. R. 13208/2; 28056 and 28055 situate within Kinania area of Machakos County; that they have a specific Power of Attorney to act for the other family members and that they also hold Letters of Administration in respect of the Estate of Ruth Kelekye Mutua (*deceased*), Anne Mutua (*deceased*) and David Mutua Kasyula (*deceased*).

2. The Plaintiffs have further averred in their Plaintiff that on diverse dates between 9th March, 2018 to date, the 1st-10th Defendants, together with other unidentified people trespassed on the suit land and threatened the Plaintiffs' workers, deposited sand and building materials on the suit land and started demarcating the suit land without the knowledge and authority of the Plaintiffs.

3. The Plaintiffs are seeking for a declaration that they, together with the mentioned family members, are the registered and legal owners of the suit land; and an order of permanent injunction and eviction to issue as against the Defendants.

4. After being served with the Summons to Enter Appearance by advertisement in the Daily Nation Newspaper of 10th April, 2018, the Defendants entered appearance through the firms of S.N. Thuku & Associates Advocates and Ameyo Guto, Etole and Company advocates. However, they did not file their Statements of Defence. Neither the Defendants nor their advocate also appeared in court when the matter came up for hearing.

5. The 2nd Plaintiff (PW1), informed the court that her, together with the family members of James Kasyula Mutua, are the registered owners of land known as L.R. No. 13208/2 measuring 370.8 Ha; L.R. No. 28056 measuring 4.040 Ha and L.R. No. 28055 measuring 8.093 Ha (*the suit properties*). It was the evidence of PW1 that on 9th March, 2018, they were informed that the Defendants and other people had invaded the suit land and that the said people were putting on the suit land illegal structures.

6. It was the evidence of PW1 that they have not authorized any person or Associations to undertake any form of activity on the suit land and that their proprietorship rights should be protected by the court.

7. The Plaintiffs' advocate submitted that the Plaintiffs have proved that they, alongside other family members are the registered proprietors of the suit properties; that the Plaintiffs, together with all the other registered proprietors, are vested with absolute ownership of the suit properties and that their rights as the registered proprietors of the suit properties are indefeasible.

8. The evidence before me shows that James Kasyula Mutua, Ruth Kalekye Mutua (*deceased*), David Mutua Kasyula (*deceased*), Simon Mutua, Moses Wambua and Peter Mweu are the registered proprietors of parcels of land known as L.R. No. 13208/2, 28056 and 28055. All the registered proprietors of the suit property donated to the Plaintiffs a specific Power of Attorney dated 23rd March, 2016.

9. PW1 informed the court that on diverse dates, the Defendants trespassed on the suit land and started depositing building materials on the suit land. According to PW1, their efforts to have the Defendants move out of the land has not been successful.

10. Under Section 23(1) of the Registration of Titles Act (*repealed*), the Grant that were issued in respect of the three parcels of land are to be taken by the court as conclusive evidence that the holders of the said titles are the absolute and indefeasible owners thereof. The said titles can only be challenged on the ground of fraud and misrepresentation.

11. The Defendants have not controverted the evidence of the Plaintiffs. Indeed, no evidence was produced to show that the title documents held by the Plaintiffs were fraudulently obtained.

12. In the circumstances, I find and hold that the Plaintiffs have proved their case on a balance of probabilities. **Except** for the prayers for general damages for trespass, punitive damages and interest which were not proved, the Plaintiffs' Plaint dated 29th March, 2018 is allowed as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 15TH DAY OF FEBRUARY, 2019.

O.A. ANGOTE

JUDGE