



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 188 OF 2015

JULIUS MAILU KOMUPLAINTIFF

VERSUS

THE HON. ATTORNEY GENERAL.....1ST DEFENDANT

THE COUNTY LAND REGISTRAR, MACHAKOS....2ND DEFENDANT

RAHAB MUTHONI NDERITU3RD DEFENDANT

JUDGMENT

1. The Plaintiff's claim is summarized in his Complaint dated 28th July, 2015. In the said Complaint, the Plaintiff alleges that he is the *bona fide* proprietor of a parcel of land known as Machakos/Kiandani/3011; that he in an Agreement dated 27th November, 2013, he agreed to sell to the 3rd Defendant the suit land for Kshs. 3,100,000 and that he released the original title document to the Defendant to enable him secure a loan from a bank.
2. The Plaintiff averred that despite not paying the full purchase price and obtaining the consent of the Land Control Board, the 3rd Defendant fraudulently transferred the suit land in his name. The Plaintiff is seeking for a declaration that he is the *bona fide* owner of the suit land; an eviction order; aggravated damages for trespass and *mense* profits of Kshs. 30,000 per month from December, 2013 until delivery of vacant possession.
3. When this matter came up for hearing, none of the Defendants or their advocates were in court. The matter was heard in the absence of the Defendants.
4. The Plaintiff, PW1, informed the court that he executed the Agreement of 27th November, 2013 with the 3rd Defendant; that the Agreement was in respect of a parcel of land known as Machakos/Kiandani/3011 (*the suit property*) which he agreed to sell to the 3rd Defendant for Kshs. 3,100,000 and that he handed to the 3rd Defendant the original Title Deed to enable him secure a loan with the bank.
5. It was the evidence of PW1 that he allowed the 3rd Defendant to take possession of the suit land but she never paid the purchase price. However, it was the evidence of PW1 that he discovered that the 3rd Defendant had fraudulently transferred the land in her name.
6. The Plaintiff produced in evidence the copy of Title Deed that was issued to him on 22nd June, 2012, the Sale Agreement of 27th November, 2013 and the official search showing the land having been transferred to the 3rd Defendant on 22nd May, 2014.
7. The Plaintiff's advocate submitted that the Sale Agreement of 27th November, 2013 was invalidated for want of the consent of the Land Control Board; that the Plaintiff did not transfer the suit land to the 3rd Defendant and that the said transfer was fraudulent. Counsel submitted that the Plaintiff has suffered loss and damage for being deprived of his land. Consequently, it was submitted the Plaintiff is entitled to *mesne* profits of Kshs. 30,000 per month from December, 2015 until delivery of vacant possession.
8. The evidence of the Plaintiff that he neither obtained the consent of the Land Control Board nor transferred the suit land to the 3rd Defendant was not controverted. Indeed, the 3rd Defendant did not testify to rebut the Plaintiff's allegations. The Plaintiff did not however produce any evidence to show that indeed the 3rd Defendant took possession of the land.
9. In the absence of the evidence by the 3rd Defendant to controvert the Plaintiff's assertion that the suit land was fraudulently transferred to her, I find that the Plaintiff has proved his case on a balance of probabilities. Consequently, and for the reasons I have given above, I allow the Plaintiff's Complaint dated 28th July, 2015 as follows:

- a. *A declaration be and is hereby issued that the Plaintiff is the bona fide registered proprietor of all that parcel of land known as Machakos/Kiandani/3011.*
- b. *A declaration be and is hereby issued that the registration of the 3rd Defendant as the registered proprietor of parcel of land known as Machakos/Kiandani/3011 is fraudulent, illegal, null and void.*
- c. *A mandatory injunction be and is hereby issued directing the 2nd Defendant to rectify the register to reflect the Plaintiff as the registered proprietor of parcel of land known as Machakos/Kiandani/3011 and issue to the Plaintiff a Title Deed for the said land.*
- d. *An order of eviction to issue as against the 3rd Defendant.*
- e. *The 3rd Defendant to pay the costs of the suit.*

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

O.A. ANGOTE

JUDGE