



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 217 OF 2014(O.S)

BETH KAMENE MUTUNE.....APPLICANT

VERSUS

COSMAS MUEMA MUALUKO.....1ST RESPONDENT

THERESIA NDUKU MUALIKO2ND RESPONDENT

RULING

1. In the Application dated 5th July, 2018, the Applicant has sought for the following orders:

a. That this Honourable Court be pleased to review and set aside its order made on the 26th day of January, 2018 ordering that the parcel of land known as Mavoko Town Block 3/4629 be sub-divided by curving out only 5 acres and that the Applicant be registered as the proprietor of the said 5 acres.

b. That this Honourable Court be pleased to substitute the same with an order to have the Applicant be registered as the proprietor of the said parcel of land in whole, since it contains all ten (10) acres that the Applicant had originally paid for.

c. That costs of this Application be provided for.

2. The Application is premised on the grounds that the Applicant bought a portion of land measuring 5 acres vide an Agreement dated 12th October, 1996; that the Applicant bought a further portion of the same land, then known as Plot No. 584-Lukenya, vide an Agreement dated 19th September, 1997 and that the aggregate land that the Applicant bought measured 10 acres. The Application was not opposed.

3. In his submissions, the Applicant's advocate submitted that the court inadvertently did not consider all the documentary evidence produced by the Applicant, including the two Agreements dated 12th October, 1996 and that the Judgment should be reviewed.

4. In the Originating Summons dated 15th December, 2014, the Applicant sought to be declared the owner of parcel of land known as Mavoko Town Block 3/4629, previously known as Lukenya Plot 584, by way of adverse possession.

5. In his Affidavit and evidence in chief, the Applicant deponed that he purchased ten (10) acres from the 2nd Respondent and that he had used the land since 1996. The suit proceeded for hearing ex-parte. In the Judgment dated 26th January, 2018, this court only considered one of the Agreements of Sale which showed that the Applicant had only purchased 5 acres of the suit land.

6. However, the evidence before me shows that in addition to the 5 acres that the Applicant purchased in 1996, he purchased a further 5 acres of the suit land. The Applicant is therefore entitled to 10 acres of the suit land and not 5 acres as alluded in the Judgment of 26th January, 2018.

7. For those reasons, I allow the Notice of Motion dated 5th July, 2018 and review the Judgment dated 26th January, 2018 as follows:

a. The Applicant be and is hereby declared to have acquired by adverse possession a parcel of land known as Mavoko Town Block 3/4629.

b. The land register relating to the suit land to be rectified in the manner specified in (a) above by the Machakos County Land Registrar.

c. The Respondents to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 24TH DAY OF MAY, 2019.

O.A. ANGOTE

JUDGE