



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MAKUENI

E.L.C CASE NO.342 OF 2017

WILLIAM NZUKI MUNGE.....PLAINTIFF

VERSUS

DAVID MUTUKU SILA.....1ST DEFENDANT

THE LAND REGISTRAR.....2ND DEFENDANT

NATIONAL LAND COMMISSISON.....3RD DEFENDANT

JUDGEMENT

1) By his plaint dated 21st September, 2017 and filed in court on 28th September, 2017 the Plaintiff prays for judgment against the Defendants jointly and severally for: -

- 1. A declaration that the plaintiff is the lawful and bonafide owner of the parcel of land No.Makueni/Kikumini/180.**
- 2. An order of revocation and/or cancellation of the title thereto and a subsequent order of rectification of register to remove MUTUKU SILA in the title deed and replace with WILLIAM NZUKI MUNGE.**
- 3. An order of permanent injunction restraining the defendant whether by himself, his servants or agents or otherwise from trespassing, selling, and/or occupying Land Parcel No.MAKUENI/KIKUMINI/180.**
- 4. Costs of this suit plus interest thereon.**
- 5. Any other or further relief as this Honourable court may deem fit and just to grant.**

2) The 1st, 2nd and 3rd Defendants were served with summons to enter appearance and to file their defence on 07th February, 2018, 30th November, 2017 and 01st November, 2017 respectively. The 1st Defendant entered appearance on 06th March, 2018 and filed a Notice of Preliminary objection on even date. After canvassing the Preliminary Objection, the same was dismissed on 23rd January, 2019 and as such, the defence filed on 20th March, 2018 was expunged from the record.

3) The 2nd and the 3rd Defendants neither entered appearance nor did they file their defence.

4) The matter was fixed for hearing on 14th May, 2019. The 1st Defendant, though entitled to cross-examine the Plaintiff did not turn up in court for hearing.

5) The Plaintiff, William Nzuki Munge, adopted his statement dated 21st September, 2017 as his evidence. He went on to produce a copy of his identity card and green card in respect of land parcel No.Makueni/Kikumini/180 in his list of documents dated 21st September, 2017 and filed in court on 28th September, 2017 as P.Exhibit No.1 and 2 respectively.

6) Briefly, his evidence was that he acquired land parcel No.Makueni/Kikumini/180 in 1958. That it is his brother, one Mutuku Sila who asked him to acquire the land for himself since the said Mutuku Sila was too old to go to Makueni. That since the D.C Machakos had written a letter to introduce Mutuku Sila to the D.O Makueni, only Mutuku Sila's identity card could be accepted. The Plaintiff therefore used Mutuku Sila's identity card to acquire the suitland and the same was registered in his brother's name. That the 1st Defendant was still too

young to grasp the events that took place.

7) It was also the Plaintiff's evidence that in the year 2012, the 1st Defendant started to claim that the suitland belonged to his father and proceeded to acquire title deed for it. The Plaintiff added that the circumstances under which the 1st Defendant acquired the title deed remain unclear to him. He therefore prayed for the grant of the orders sought in the plaint. The Plaintiff's Counsel in his submissions cited several authorities and urged the Court to grant the orders sought since the Plaintiff's claim remains uncontroverted.

8) From the evidence on record, the averments that the Plaintiff acquired the suitland in 1959 and that he has lived on it since then remain uncontroverted. The averments and the evidence that the Plaintiff's brother, Mutuku Sila, was the one who lent him his identity card so that he could acquire the suitland as well as the Plaintiff's is also uncontroverted. The above being the case, the 1st Defendant ought to have notified the Plaintiff before he acquired the title deed for the suitland. The copy of the green card (P.Exhibit No.2) does not indicate how the title deed was issued on 17th January, 2007.

9) Arising from the above, I make a finding that the Plaintiff has satisfied this Court that he has a cause of action against the Defendants jointly and severally. In the circumstances, I hereby proceed to enter judgment for the Plaintiff and against the Defendants in terms of prayers 1, 2, 3 and 4 of the plaint.

Signed, Dated and Delivered at Makueni this 14th day of October, 2019.

MBOGO C. G.,

JUDGE.

In the presence of: -

Ms. Kyalo for the Plaintiff present

No appearance for the 1st Defendant

Ms. C. Nzioka – Court Assistant

MBOGO C. G., JUDGE,

14/10/2019.