



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 117 OF 2006**

**DAVID MUASYA MUKEKU.....1<sup>ST</sup> PLAINTIFF**

**PATRICK MUSAU KAVITHI.....2<sup>ND</sup> PLAINTIFF**

**JACKSON MAWEU MULATYA.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**PHILIP MUASA MBALUTO.....DEFENDANT**

**JUDGMENT**

1. In the Amended Complaint dated 22<sup>nd</sup> November, 2007, the Plaintiffs have averred that the Defendant is their uncle; that they are the legal representatives of the late Mulatya Mukeku Mbaluto and that the Defendant litigated with their late father over land parcel number 29, Iveti Adjudication Section, which resulted into the sub-division of the land into parcels number Iveti/Mung'ala, 1300, 1312, 1314, 1315, 1322, 1301, 1296, 1299, 1297, 1326, 1328 and 1331.
2. According to the Plaintiffs, they have beneficial interest over the suit property and that they have settled on the land with their respective families. The Plaintiffs' claim against the Defendant is that by misrepresentation, the Defendant had the suit properties registered in his name while knowing that the same belonged to their deceased father.
3. The Plaintiffs finally averred that the Defendant instituted cases before the Land Disputes Tribunal, which Tribunal usurped the powers of the High Court in determining the issue of ownership of the suit properties; that the Defendant has purported to execute Judgment against individuals who were not parties to the dispute before the Tribunal and that the proceedings before the Tribunal and the resultant execution of the proceedings in CMCC Misc. Application Number 53 of 2005, Machakos, are illegal, wrongful and unprocedural.
4. The Plaintiffs have prayed for a declaration that the proceedings and Judgment before the Land Disputes Tribunal, Kathiani in L.C No. 120/96 and Machakos CMCC Misc. Application No. 53 of 2005 are illegal, unlawful, *ultra vires*, null and void and for a declaration that the suit properties belong to the family of Mulatya Mukeku Mbaluto (*deceased*).
5. In his Defence, the Defendant averred that the deceased, Mulatya Mukeku Mbaluto, was not on his date of death in possession of parcel of land known as Iveti/Mung'ala/1300 (*the suit property*); that the Plaintiffs have no beneficial interest in the suit land and that the suit land was registered in his name on 18<sup>th</sup> July, 1991 when adjudication process took place.
6. The Defendant finally averred that this suit is time barred; that the issues raised in the current suit were determined in the Land Disputes Tribunal Case Number 120 of 1996 and that this suit is bad in law and should be dismissed with costs.
7. During the hearing, the 2<sup>nd</sup> Plaintiff, PW1, informed the court that the suit land belonged to his late grandfather, Mukeku, who had four wives. According to PW1, his grandfather was the Defendant's uncle and that he moved in the suit property in 1940's. It was the evidence of PW1 that his grandfather, Mukeku Mbaluto, moved on the land alone and left his four brothers behind, including the Defendant's father.
8. PW1 stated that by the time his late grandfather died in 1971, he had settled on the suit land with his four wives; that the 1<sup>st</sup> Plaintiff is one of the sons of his grandfather; that his father was known as Kavithi Mukeku Mbaluto (*deceased*) and that his father was buried on the suit land where he lived with his family. PW1 informed the court that he is 71 years old and has three sons. PW1 informed the court that the 1<sup>st</sup> Plaintiff and his children also live on the suit land and so does the 3<sup>rd</sup> Plaintiff, who is his cousin.
9. PW1 stated that several suits were filed in the Land Disputes Tribunal in respect of the suit land between his grandfather's son (*Mulatya*) and the son of his grandfather's brother, William Kangangi. It was the evidence of PW1 that his late grandfather invited his brothers, including the Defendant's father, Muasa Mbaluto, on the suit land.

10. It was the evidence of PW1 that the original suit land was parcel number 29 which was registered in the name of the Defendant; that he has a stake in parcel number 29 and that he has nowhere to go.
11. In cross-examination, PW1 stated that parcel number 29, Ivumbani, was approximately 200 acres; that it was sub-divided into several portions and that he was not aware when the adjudication process for the said land was done. It was the evidence of PW1 that the said land was sub-divided into 42 portions and that some of the title documents have not been issued.
12. PW1 informed the court that parcel number 1300 was registered in the name of the Defendant; that the rest of the family members were allocated the other sub-divisions and that he was not aware that the Land Disputes Tribunal awarded the Defendant parcel number 1300 Iveti Mung'ala. PW1 acknowledged that he does not live on parcel number 1300 Iveti Mung'ala.
13. PW2, the 3<sup>rd</sup> Plaintiff, informed the court that the Defendant is his uncle; that his late father was Mulatya Mukeku and that his Plot No. 29 Iveti belonged to his late grandfather, Mukeku Mbaluto.
14. PW2 stated that the adjudication process in respect to the suit land commenced in 1973 by which time his grandfather had already died. It was the evidence of PW2 that more than 200 family members of the late Mbaluto are occupying the suit land; that there was a suit between his father and brother and that the said suit was finalized. According to PW2, they are entitled to the suit land.
15. In cross-examination, PW2 stated that he was not present when the adjudication process was commenced in 1973; that the whole land was 200 acres and that the Defendant had been registered as the proprietor of parcel number 1300. PW2 stated that the title for parcel number 1127 was in his father's name and that they have since distributed their father's Estate. It was the evidence of PW2 that he lives on parcel number 1127.
16. The Defendant, DW1 informed the court that he is the registered proprietor of land parcel number Iveti/Mung'ala/1300 measuring 6.3 Ha; that the land is ancestral and that he acquired it through inheritance from his late mother.
17. It was the evidence of DW1 that after adjudication, he was issued with a Title Deed in respect of parcel number 1300 in 1991; that the said land was one of the sub-divisions of parcel number 29 and that his uncle, Mulatya Mukeku, was given parcel numbers 1127 and 1128.
18. According to DW1, his uncle Mulatya Mukeku instituted a case at the Land Disputes Tribunal, Kathiani Case Number 120 of 1996 in respect of parcel number Iveti/Mung'ala/1300; that the Tribunal ruled that the suit land belongs to him and that the Award of the Tribunal was adopted by the court in Machakos CMCC Miscellaneous Application Number 53 of 2005.
19. The Plaintiffs' advocate submitted that parcel number Iveti/Mung'ala/1300 was excised from Iveti Adjudication Section 29; that the Plaintiffs never lived on the said land for all their lives and that the land having been registered, the Tribunal had no jurisdiction to deal with the dispute in respect to the suit land.
20. Counsel submitted that the Plaintiffs who are all over 70 years old have a right over that suit land and that the registration of the suit land in the name of the Defendant was obtained through fraud, misrepresentation, illegality or by corrupt means and should be cancelled.
21. The Plaintiffs in this matter are the grandchildren of the late Mukeku Mbaluto, who moved on a parcel of land known as Iveti/Mung'ala/29 measuring approximately 200 acres. According to the evidence of PW1 and PW2, the said Mukeku Mbaluto died in 1971 before the adjudication process of Iveti Adjudication Section commenced in 1973.
22. The Defendant is an uncle of the Plaintiffs, who, according to the Plaintiff, had litigated with the Plaintiffs' fathers (*his brothers*) over some of the portions that arose out of the sub-division of parcel number 29, which decision was in his favour.
23. The evidence produced in court shows that parcel of land known as Iveti/Mung'ala/1300, which is one of the sub-division of parcel number 29, was registered in favour of the Defendant on 18<sup>th</sup> July, 1991. According to the Defendant, he inherited this property from his parents.
24. The Defendant produced in evidence the proceedings of the Land Tribunal Case No. 120 of 1996. In the said proceedings, the Defendant sued his uncle, Mulatya Mukeku (*the 3<sup>rd</sup> Plaintiff's uncle*). According to DW1, he sued his uncle who trespassed on parcel of land known as Iveti/Mung'ala/1300 notwithstanding that he (*the uncle*) was the registered proprietor of parcels number Iveti 1127 and 1128. The Defendant sought for an order of eviction of the 3<sup>rd</sup> Plaintiff's father from the said land.
25. After hearing the dispute, the Tribunal directed the 3<sup>rd</sup> Plaintiff's father to move from parcel number 1300 to his parcels of land being 1128 and 1127. The decision of the Tribunal was never appealed against by the Plaintiffs or their parents as stipulated under the Land Disputes Tribunal Act (*repealed*).
26. The Plaintiffs are challenging the decision of the Tribunal which was duly adopted by the court in Misc. Application No.53 of 2005 on the ground that the Tribunal had no jurisdiction to arrive at the decision it did.
27. The jurisdiction of the Tribunal was donated to it by virtue of Section 3(1) of the Land Disputes Tribunal. The said Section provides as follows:

**“(1) Subject to this Act, all cases of a civil nature involving a dispute as to—**

- a. the division of, or the determination of boundaries to land, including land held in common;*
- b. a claim to occupy or work land; or*
- c. trespass to land, shall be heard and determined by a Tribunal established under Section 4.”*

28. The claim by the Defendant before the Tribunal was that the Plaintiffs' father had trespassed on his land. The Tribunal found that indeed, the 3<sup>rd</sup> Plaintiff's father had left his portions of land being parcel numbers 1127 and 1128 and moved on the Defendant's land. The Tribunal therefore dealt with the issue of trespass and not ownership of land. Consequently, the Tribunal acted within its mandate and cannot be faulted.

29. Even if it is argued that the Tribunal did not have the jurisdiction to order the Plaintiffs' parents to vacate parcel number 1300, the evidence by the Plaintiffs was that the adjudication process in respect of parcel number 29 which belonged to their grandfather was done in 1973. The sub-division of the said land, according to the Plaintiffs, gave rise to 42 parcels of land.

30. The Land Adjudication Act provides for an elaborate process of challenging the demarcation of land during adjudication, with the final challenge being mounted before the Minister. There is no evidence before this court to show that before the adjudication process was finalized, and a register prepared, the Plaintiffs or their parents filed any objection before the numerous bodies established under the Act.

31. Having not objected to the adjudication process, the Plaintiffs cannot, after several years down the line, purport to challenge the said adjudication through the court process. Such an action is not only illegal, but is meant to cause chaos and confusion in an otherwise well thought out process of Land Adjudication and registration.

32. The Plaintiffs in this matter are not only challenging the title in respect of parcel number Iveti/Mung'ala/1300 that was registered in favour of the Defendant in 1990, but also several other portions that were created after sub-division of parcel No. 29. However, they neither joined the registered proprietors of those parcels of land in this matter nor informed the court who they were. It would appear that the Plaintiffs were on a fishing expedition and had no clue what their claim was in the first place.

33. The analysis of the evidence before me shows that the Plaintiffs have not proved their case on a balance of probability. The Plaintiffs' suit is therefore dismissed with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 4<sup>TH</sup> DAY OF OCTOBER, 2019**

**O.A. ANGOTE**

**JUDGE**