



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 469 OF 2017

SAMUEL SOO MUINDE (*Suing as the Administrator to the*

Estate of JOSEPH MUINDE SOO (Deceased)).....**PLAINTIFF**

VERSUS

PAUL MUINDE MUTISYA.....**1ST DEFENDANT**

MARK WAMBUA MUNYAO.....**2ND DEFENDANT**

JUDGMENT

1. In the Complaint dated 27th November, 2017, the Plaintiff has averred that by virtue of being the Legal Administrator of the Estate of the late Joseph Muinde Soo, he is the owner of land known as Machakos/Kaliluni/1588 (*the suit property*); that the Defendants trespassed on the suit property on diverse dates in the year 2014 and that the 2nd Defendant has excised part of the suit property and sold it to the 1st Defendant.
2. The Plaintiff has averred that after trespassing on the suit property, the Defendants built permanent structures on the land and that his attempts to recover the land from them has been met with animosity, violence and threats. The Plaintiff is seeking for a declaration that he is the lawful and rightful owner of the suit property and for an order of eviction of the Defendants from the said land.
3. The Defendants filed a Defence and Counter-claim in which they averred that the suit property belonged to the late Joseph Muinde Soo; that the late Joseph Muinde had several children who are all deceased except the Plaintiff and that the Plaintiff holds the land in trust for himself and for the children of the late Soo and their surviving spouses and children.
4. According to the Defendants, the late Joseph Muinde Soo gifted to the late Beth Mwikali and Lydia Muinde the suit property; that the suit land should go to their surviving spouses and/or children and that the 2nd Defendant is the spouse of the late Beth Mwikali.
5. In the Counter-claim, the Defendant has sought for a declaration that the Plaintiff is holding the Title Deed to the suit property in trust for himself and for all the beneficiaries of the late Joseph Muinde Soo, including the 2nd Defendant, and that the Plaintiff should excise and transfer to the 2nd Defendant the portion of land which the late Beth Mwikali Muinde is entitled to.
6. In his evidence, the Plaintiff, PW1, informed the court that the 2nd Defendant is his brother-in-law; that the 2nd Defendant trespassed on land known as Machakos/Kaliluni/1588 (*the suit property*) and cut down trees and that the 2nd Defendant also allowed the 1st Defendant to trespass on the suit property and put up permanent buildings.
7. PW1 stated that the 2nd Defendant is not the administrator of the Estate of the late Joseph Muinde Soo and has no claim whatsoever over the Estate of his late father. PW1 informed the court that the suit land is registered in his name and that his late father had a total of thirteen (13) children.
8. According to PW1, his father bequeathed him with the suit property by way of a Will; that his late father gifted all his male children with land and that none of the daughters of the deceased were bequeathed with land by their late father. According to PW1, the Estate of his late father was distributed by the court and that by the time his father died, the Title Deed to the suit land had not been issued.
9. PW1 informed the court that he filed Machakos Succession Cause No. 116 of 1994; that the Certificate of Confirmation of Grant was issued in 1997 and that the said Grant and Certificate of Confirmation has never been challenged.
10. On his part, the 2nd Defendant, DW1, informed the court that his late wife, Beth Mwikali Munyao, was bequeathed parcel of land known as Machakos/Kaliluni/1588 (*the suit property*) by her late father, Joseph Muinde Soo; that he is the one who has been using the land and that the suit property does not belong to the Plaintiff as alleged.

11. In cross-examination, DW1 stated that his wife died in the year 2013; that he sold the suit property to the 1st Defendant after the death of his wife and that he was never made aware of the succession proceedings in respect to the Estate of the late Joseph Muinde Soo.
12. DW2 stated that the late Joseph Muinde Soo was his cousin and that he had several children. DW2 informed the court that in the year 1989, the late Mr. Soo Muinde held a family meeting in respect to the sub-division of the suit property and that he gifted the suit property to Beth Mwikali (*deceased*) and Lydia Muinde (*deceased*).
13. According to DW2, the late Beth Mwikali was the wife of the 2nd Defendant and was utilizing the suit property and that the Plaintiff should excise the portion of land belonging to the late Beth Mwikali and transfer it to the 2nd Defendant.
14. The grandson of the late Joseph Muinde Soo, DW3, stated that his late father was Daniel Waita Muinde (*deceased*); that when his grandfather was alive, he gifted the portion of the suit property to Beth Mwikali (*deceased*) and Lydia Muinde (*deceased*) and that the suit property does not belong to the Plaintiff.
15. In the submissions, the Plaintiff's advocate submitted that the Title Deed in respect to the suit property is in the name of the Plaintiff; that the Succession proceedings for the Estate of the late Joseph Muinde Soo have never been challenged and that this suit is *res judicata*.
16. On his part, the Defendants' advocate submitted that the Plaintiff holds the Title Deed for land parcel number Machakos/Kaliluni/ 1588 (*the suit property*) in trust for himself and the family of the late Joseph Muinde Soo and that the Plaintiff's suit should be dismissed. Counsel relied on numerous authorities which I have considered.
17. It is not in dispute that parcel of land known as Machakos/Kaliluni/ 1588 (*the suit property*) initially belonged to the late Joseph Muinde Soo, who was the father of the Plaintiff and the 2nd Defendant's father-in-law. It was the evidence of the Plaintiff that his late father, Joseph Muinde Soo, bequeathed to him the suit land by way of a Will and that all the male children of the late Soo were gifted with other parcels of land.
18. According to the evidence of the Plaintiff, after the death of the late Joseph Muinde Soo, the High Court in Machakos Succession Cause No. 116 of 1994 distributed the entire Estate of the late Joseph Muinde Soo. The Plaintiff produced in evidence the Certificate of Confirmation of a Grant in Machakos Succession Cause No. 116 of 1994 dated 29th April, 1997. The said Certificate of Confirmation of a Grant shows that parcel of land known as Iveti/Kaliluni/1588 was allocated to the Plaintiff by the court. It is on the basis of the said Certificate of Confirmation of Grant that the Title Deed for Machakos/Kaliluni/1588 was issued to the Plaintiff on 25th April, 2017.
19. The 2nd Defendant informed the court that the suit property was bequeathed to his late wife, Beth Mwikali Muinde, by his late father; that he is the one entitled to the suit land by virtue of being a spouse of the late Beth Mwikali Muinde and that the Plaintiff is holding the Title Deed to the suit property in trust for the late Beth Mwikali and the entire family of the late Joseph Muinde Soo.
20. The Defendants admitted that the distribution of the Estate of the late Joseph Muinde Soo by the court in Machakos High Court Succession Cause No 116 of 1994 has never been set aside. Indeed, there is no evidence before the court to show that the late Beth Mwikali objected to the manner in which the Estate of her late father was distributed.
21. If the late Beth Mwikali never moved the Succession Court to have the suit property registered in her name, then, how can her husband, the 2nd Defendant, raise that issue?
22. The High Court having determined how the Estate of the late Joseph Muinde Soo should be distributed in Machakos High court Succession Cause No. 116 of 1994, this court cannot be called upon to reverse that position. Indeed, the 2nd Defendant does not have the *locus standi* to challenge the distribution of the Estate of the late Joseph Muinde Soo in this court.
23. That being the law, and the Plaintiff having obtained the Title Deed pursuant to the Certificate of Confirmation of a Grant, I find that the 2nd Defendant has no valid claim over the suit land. Indeed, the issue of the Plaintiff holding the Title Deed of the suit land in trust for the family of the late Joseph Muinde Soo cannot arise because the Estate of the late Joseph Muinde was distributed by the court and does not exist anymore.
24. In the circumstances, the purported sale of the suit land by the 2nd Defendant to the 1st Defendant has no basis in law and is null and void.
25. For those reasons, I dismiss the Defendants' Counter-claim dated 2nd March, 2018 with costs and allow the Plaintiff's Plaint dated 27th November, 2017 as follows:

a. A declaration be and is hereby issued that the Plaintiff is the lawful and rightful owner of the parcel of land known as Machakos/Kaliluni/1588.

b. An order of injunction be and is hereby issued restraining the Defendants, their agents, workers, servants or anybody howsoever claiming under them from trespassing, remaining on, cultivating or in any other manner dealing with land parcel No. Machakos/Kaliluni/1588.

c. An order for eviction of the Defendants from land parcel No. Machakos/Kaliluni/1588 be and is hereby issued.

a. The Defendants to pay the costs of the suit.

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

O.A. ANGOTE

JUDGE