



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 156 OF 2016

JAMES MUEMA 1ST PLAINTIFF

BENEDETA MBITHE MUEMA 2ND PLAINTIFF

VERSUS

KING'OLA MBAIKA DEFENDANT

JUDGMENT

1. In the Plaint dated 19th October, 2016, the Plaintiffs averred that they are the registered proprietors of land known as Muputi/Kiima-Kimwe 3022 and 3023; that in the year 2014, the Defendant trespassed onto the suit land and that the Defendant should be evicted from the two parcels of land.
2. Although the Defendant was served with Summons to Enter Appearance, he neither entered appearance nor filed a Defence. The matter proceeded for hearing on 6th March, 2017.
3. The 1st Plaintiff, PW1, informed the court that him, together with his wife, the 2nd Plaintiff, entered into an Agreement of Sale with Edith Mbaika for the sale of the two suit properties; that the suit land was then transferred into their joint names and that the Title Deeds were issued to them.
4. According to PW1, in April, 2014, the son of Edith Mbaika, who is the Defendant herein, trespassed on the suit properties and started building temporary structures thereon and that he should be restrained from entering the land.
5. PW2 informed the court that she indeed sold the two parcels of land to the Plaintiffs and was paid the agreed purchase price of Kshs. 1,440,000.
6. According to PW2, the Defendant, who is his son, should be evicted from the land.
7. PW3 was one of the witnesses to the agreement that was entered into between the Plaintiffs and PW2. He testified on how the said agreement was executed by all the parties.
8. The 2nd Plaintiff, PW4, also informed the court on how she jointly bought the two parcels of land with her husband.
9. The Plaintiffs' advocate filed submissions and authorities. The Plaintiffs' advocate submitted that the Plaintiffs have proved that they are the legal owners of the suit land.

10. The Plaintiffs produced in evidence the Sale Agreement of 13th September, 2012 in which they entered into with the Edith Mbaika, PW2.

11. The Plaintiffs also produced the Title Deeds in respect to the suit properties. The said Title Deeds shows that the Plaintiffs were registered as the proprietors of the land on 11th November, 2013.

12. The Defendant did not adduce any evidence to controvert the Plaintiffs' evidence. In view of the provisions of Section 26(1) of the Land Registration Act which provides that the certificate of title issued by the Registrar shall be taken by the courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, I find that the Plaintiffs have proved their case on the balance of probabilities.

13. For those reasons, I allow the Plaint dated 19th October, 2016 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 26TH DAY OF JANUARY, 2018.

O.A. ANGOTE

JUDGE