



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MACHAKOS
ELC. CASE NO. 176 OF 2014

JONATHAN MUTHIANI.....1ST PLAINTIFF
PAULINE M. VAITA.....2ND PLAINTIFF
PAUL O. BUNYASI.....3RD PLAINTIFF
SILVESTER MUSERA OSODO..... 4TH PLAINTIFF
FRANCIS MAINA.....5TH PLAINTIFF
RACHEL NJERI NGIGI.....6TH PLAINTIFF
IRENE NGINA MUINDE.....7TH PLAINTIFF
WILLIAM O. ODHIAMBO.....8TH PLAINTIFF
ROBERT K. MUTAI.....9TH PLAINTIFF
RABECA OPONDO.....10TH PLAINTIFF
SOLOMON O. ODEP.....11TH PLAINTIFF
BENJAMIN KOYIER.....12TH PLAINTIFF
ANDREW K. PSIWA13TH PLAINTIFF
SAMUEL NJIRU.....14TH PLAINTIFF
FELIX NDAMBUKI KIMEU.....15TH PLAINTIFF
BENJAMIN O. BUYU.....16TH PLAINTIFF
CHARITY NJERI IRUNGU.....17TH PLAINTIFF
JULIANA MWOSE.....18TH PLAINTIFF

ROSEMARY KIMUYU.....19TH PLAINTIFF
ERIC M. NYAMU.....20TH PLAINTIFF
LUCY GAKII KIMATHI.....21ST PLAINTIFF
MOSES M. MOTOKAA.....22ND PLAINTIFF
LUCIA W. WAMUTITU.....23RD PLAINTIFF
PAMELA NYABOKE MARENDI.....24TH PLAINTIFF
WILLIAM MONYANCHA GETUNO.....25TH PLAINTIFF
NATHAN KITIO PSIWA.....26TH PLAINTIFF
JANE T. MORINTAT.....27TH PLAINTIFF
SUSAN WANJIRU.....28TH PLAINTIFF
SAMMY G. MUCHIRI.....29TH PLAINTIFF

VERSUS

THE LEGAL REPRESENTATIVE OF THE ESTATE OF
JULIANA WAVINYA (*Deceased*).....1ST DEFENDANT
PROF. DAVID N. NZIMO (*Sued as beneficiary to the Estate of*
JULIANA WAVINYA – (*Deceased*).....2ND DEFENDANT
HENRY MUTISO.....3RD DEFENDANT
NDAMBUKI MWANGANGI IVILI (*legal representative of the*
Estate of MWANGANGI IVILI.....4TH DEFENDANT
SYOMITI MWANGANGI.....5TH DEFENDANT
SCOLASTICA MUTETE KILONZO.....6TH DEFENDANT
TIMES VIEW PROPERTIES LIMITED.....7TH DEFENDANT
SYOKIMAU FARM LIMITED.....8TH DEFENDANT

JUDGMENT

1. In the Complaint dated 18th November, 2014, the Plaintiffs averred that the 8th Defendant was the registered proprietor of L.R. No. 12715/158; that by virtue of shareholding in the 8th Defendant's company, Mwangangi Ivili (*deceased*) was allocated the suit land but passed on before the transfer could be effected in his favour and that on 2nd May, 2008, the 3rd to 6th Defendants transferred their beneficial interests in

the suit land to the 7th Defendant.

2. According to the Plaintiffs, the 7th Defendant sub-divided the suit land and sold different portions thereof to the Plaintiffs; that the Defendants have refused to transfer the said portions to them and that they are genuine and *bona fide* purchasers of different portions of the suit land.

3. Although all the Defendants were served with Summons to Enter Appearance by way of advertisement in the Standard newspaper of 27th March, 2015, they neither entered appearance nor filed a Defence.

4. The 1st Plaintiff, PW1, informed the court when the 3rd, 4th, 5th and 6th Defendants sold their beneficial interests in the suit land to the 7th Defendant, the 7th Defendant sub-divided the land and sold the sub-divisions to the Plaintiffs.

5. It was the evidence of PW1 that they paid the agreed purchase price but the Defendants have declined to Transfer the suit land to them.

6. According to PW1, Juliana Wavinya (*deceased*) illegally alienated the suit land which had been allocated to Mwangangi Ivili (*deceased*); that the 7th Defendant having been paid a substantial amount of the purchase price has been evasive in following up with the transfer of the suit property and the Plaintiffs are genuine and *bona fide* purchasers of different portions.

7. The Plaintiffs' advocate filed submissions which I have considered.

8. The evidence produced by the Plaintiffs shows that L.R. No. 12715/158 measuring approximately 5 acres was registered in favour of Syokimau Farm Limited, who, according to the grant, transferred the land to Juliana Wavinya on 30th June, 1992.

9. According to the Plaintiffs, the suit property should have been transferred to Mwangangi Wavinya and not Juliana Wavinya as indicated in the grant.

10. Indeed, the Plaintiffs produced the letter dated 25th November, 2004 by Syokimau Farm Limited in which the said company stated that the land should have been registered in the name of Mwangangi Ivili who was their member number 328. The legal representatives of the late Juliana Wavinya have not denied that the said land was either fraudulently or by mistake registered in favour of Juliana Wavinya.

11. PW1 informed the court that the legal representatives and the beneficiaries of the late Mwangangi Ivili transferred their interests in the suit land to the 7th Defendant, who sub-divided the land into several portions. PW1 produced in evidence the sub-division plan showing the sub-divisions that were sold to the Plaintiffs by the 7th Defendant.

12. PW1 also produced in evidence the Sale Agreements that the Plaintiffs entered into with the 7th Defendant in respect of the said sub-divisions, which, it would appear, have not been surveyed.

13. The Defendants have not controverted the above averments by the Plaintiffs. Indeed, the 7th Defendant has not denied that after purchasing the suit land, it sub-divided it into several portions and sold the said portions to the Plaintiffs.

14. As was held by the Court of Appeal in the case of *Chase International Investment Corporation and Another vs. Laxman Keshra & others (1978) KLR 143*, if the circumstances are such as to raise equity in favour of the Plaintiffs and the extent of the equity is known, and in what way it should be satisfied, the Plaintiffs are entitled to succeed.

15. The Plaintiffs have shown by way of evidence that they purchased the portions of land in dispute and have even taken possession of the same. They are therefore entitled to be registered as the proprietors of

the land.

16. For those reasons, I allow the Complaint dated 18th November, 2014 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 2ND DAY OF MARCH, 2018.

O.A. ANGOTE

JUDGE