



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ELC SUIT NO. 68 OF 2017

ANDREW MUTAVA.....PLAINTIFF

VERSUS

MUTUA NTHUKA.....1ST DEFENDANT

CHRISTOPHER KISILU.....2ND DEFENDANT

MUSEMBI MUINDI.....3RD DEFENDANT

NYAMAI MANGA'O.....4TH DEFENDANT

NDUNGE AMU.....5TH DEFENDANT

AGNES MULI.....6TH DEFENDANT

JUDGMENT

1. By his plaint dated 7th May, 2017 the plaintiff prays for judgment against the defendants for;

I. An order of injunction restraining the defendants or their agents from entering on the said land parcel No. Makueni/Kai "A"/703 until the suit is heard and determined.

II. An order that status quo be maintained until the matter is heard and determined.

III. An order that the defendants restrained from further construction and/or doing business in the said plot.

IV. General damages for selling a portion of the aforesaid plot.

V. Costs of this suit

VI. Any other relief the court may fit to grant

2. The defendants did not enter appearance and nor did they file their defence after being served with summons. Consequently, the court directed that this matter proceeds as an undefended suit.

3. When the matter came up for hearing on the 22nd January, 2018, the plaintiff adopted his statement which he recorded and signed on the 7th April, 2017 as his evidence.

4. His evidence is that he is the registered owner of land parcel number Makueni/Kai "A" /703. He produced a copy of the title deed for the said as PEX No. 2. He went on to produce copies of demand letters that he issued to the defendants as PEX Nos. 2(a) to (f) respectively.

5. The plaintiff said that the late Peter Kituu who is his nephew secretly sold a portion of his land to the defendants without his knowledge.

6. In his submissions, the plaintiff's counsel cited section 26(1) of the Land Registration Act number 3 of 2012 which provides that as

follows;

The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence of that person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except:-

a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or

b. Where the certificate of title has been acquired illegally, procedurally or through corrupt scheme.

7. The counsel submitted that on the face of it, it is only the plaintiff who can be said to own the suit land parcel and invited the court to grant the orders sought. The counsel is silent on the issues of damages. It will also be noted that the defendant did not adduce any evidence which the court can rely on in determining what damages, if any, that the plaintiff is to be awarded. In my judgment, I shall not make any award for damages.

8. Prayers (i) and (ii) of the plaint cannot be granted either as those prayers became spent upon the issuance of temporary order of injunction on 10/4/2017.

9. There was no evidence of the defendants having constructed on the suit land and as such prayers (iii) cannot be granted.

10. Arising from the foregoing, I am persuaded that the plaintiff is the registered proprietor of land parcel Makueni/Kai "A"/703. In the circumstances I hereby proceed to issue a declaratory order under prayer (vi) of the plaint. There shall be costs of the suit in favour of the plaintiff.

Signed, dated and delivered at Makueni on this 24th day of April, 2018.

MBOGO C.G

JUDGE

In the presence of;

No appearance for the plaintiff

Mr.Kwemboi Court Assistant

MBOGO C.G, JUDGE

24/4/2018