

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 188 OF 2017

MBITHI MUYANGA.....1ST PLAINTIFF

CHARLES MUEMA.....2ND PLAINTIFF

PAUL NGUMBI.....3RD PLAINTIFF

AUGUSTINE NGILA.....4TH PLAINTIFF

MUTETI MULI.....5TH PLAINTIFF

VERSUS

MUTHUSI NDETO.....1ST DEFENDANT

MBULWA NTHENGE.....2ND DEFENDANT

JUDGMENT

1. In the Plaint dated 18th April, 2017, the Plaintiffs are seeking for an order of permanent injunction against the Defendants from entering, sub-dividing, taking possession, selling or transferring land known as L.R. 2902.

2. In the said Plaint, the Plaintiffs averred that they are related to the Defendants by virtue of being cousins and grandchildren of one Muoka; that they are grandchildren from the house of Syekonyo while the Defendants are from the house of Mukui and that their grandfather had two parcels of land which he gave to his two wives, Syekonyo as the 1st wife and Mukui as the 2nd wife.

3. The Plaintiffs averred that in the year 1983, Syekonyo's land was sub-divided into six (6) portions and distributed to his sons; that the land given to Mukui was also sub-divided and distributed amongst her sons and that at all material times, the Plaintiffs were entitled to L.R. No. 2902.

4. It is the Plaintiffs' case that they have always lived on their respective portions of land and that it was not until 2015 that the Defendants started claiming that they are entitled to the suit land.

5. The Defendants neither entered appearance nor filed a Defence. The matter proceeded for hearing on 8th February, 2018 when the 2nd Plaintiff testified.

6. The 2nd Plaintiff who had the authority of the other Plaintiffs, informed the court that he is the grandchild of the late Muoka; that Muoka gave his two wives two parcels of land and that the family of Syekonyo in which the Plaintiffs belong sub-divided their portion of land into parcel numbers 1368, 1369, 1370, 1407, 1410 and 1411.

7. According to PW1, the Defendants colluded with clan elders and hived parcel of land number 2902 from Syekonyo's land and that parcel of land number 2902 was illegally created by the Defendants.

8. Considering that the Defendants did not rebut the Plaintiffs' claim, the issue of parcel of land number 2902 having been hived from the Plaintiffs' entitlement has not been controverted. In the circumstances, I find and hold that the Plaintiffs have proved their case on a balance of probabilities. I therefore allow the Plaint dated 18th April, 2017 in terms of prayer numbers (a), (b) and (c).

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 11TH DAY OF MAY, 2018.

O.A. ANGOTE

JUDGE