



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ELC MISC.NO. 42 OF 2017

(FORMERLY ELC HC APPL. NO. 208 OF 2009 MACHAKOS)

JACKSON KALIKO NDINDIO.....PLAINTIFF /APPLICANT

VERSUS

THE ATTORNEY GENERAL.....1ST DEFENDANT/RESPONDENT

THE DISTRICT LAND REGISTRAR....2ND DEFENDANT/RESPONDENT

RULING

1) There is before me an amended notice of motion application expressed to be brought under sections 8 and 9 of the Law Reform Act (Cap 26 of the Laws of Kenya) and Order 53 Rules 3 (1) and (3) of the Civil Procedure Rules for:-

a) An order of mandamus to remove into this honourable court and compel the 2nd Defendant/Respondent to cancel, amend or rectify the land register in respect of land parcel number Mbooni/Iani/898 by removing the name of Mutune Mutua and substituting it with that of the Applicant herein Jackson Kaliko grounds on its face, the statutory statement dated 24th June, 2009, the verifying and further affidavit of Jackson Kaliko Ndindo sworn on the 24th June, 2009 and 14th July, 2009 respectively.

2) On the 28th November, 2014, the amended notice of motion application was fixed for hearing on 3rd March, 2015. The court directed that the respondents be served with a hearing notice. This was done on the 9th February, 2015 as can be seen from the affidavit of service sworn at Nairobi on the 2nd March, 2015 and filed in court on 3rd March, 2015.

3) As it were, the respondents did not oppose the amended application and as such, Mr. Aunga who held brief for Mr. Kitulu for the applicant asked the court to grant the prayers sought in the application.

4) Mr Aunga gave the history of the suit land Mbooni/Iani/898 by stating that it was family land initially owned by the late Kiliku M Muvai who is a great grandfather of the applicant. He went on to submit that in 1964 one Kivwau Nzyuko sued the applicant and his family at Uani District Magistrate Court in DMCC No. L no. 20/1965 where he claimed part of the land that the applicant defended the suit as a result of which the suit dismissed. That applicant's family rewarded him for the expenses he had incurred by giving a part of the disputed land. The land was surveyed and registered as LR no. Mbooni/Iani/898 in 1975. The applicant says that the land was fraudulently registered in the name of one Mutuku who is unknown to him.

5) The counsel submitted when the applicant went to the Registrar Makueni to get the record regarding the said Mutuku Mutua, the officers declined to provide him with any information. The applicant says that he has been in occupation of the suit land since 1960's whereas the said Mutua has never been seen. The counsel further submitted that the title to the suit land has been in the land registry since 1975 when the titles were issued. That the applicant tried to have the registered corrected in line with sections 14 and 142 of the repealed Registered Land Act Chapter 300 but he failed to do so. That the matter was reported to the area Chief who summoned the neighbours under orders 661, 665, and 667 and they appeared to answer the Chief's summons. Those neighbours were Mutua Musau and Kivwau who both all admitted that the suit land belongs to the applicant.

6) The counsel submitted that the court has jurisdiction under the Land Registration Act, 2012 to order for the rectification of the register.

7) The counsel further submitted that the respondents who are public officers failed to act as per the law as was required of them. He pointed out that the applicant's demand letter annexed as JKN-1 to the further affidavit sworn on the 13th July, 2009 was not acted upon.

8) Arising from the above, I do note that indeed the court has jurisdiction under the Land Registration Act, 2012 to order for rectification of the register.

9) Section 80(1) of the Land Registration Act, 2012 provides as follows;-

“ subject to the sub section (2) , the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained made or omitted by fraud or mistake.”

Section 80(2) of the same Act provides that:-

“The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration. Unless the proprietor had knowledge of the omission, fraud or mistake in consequences of which the rectification is sought, or caused such omission fraud, or mistake or substantially contributed to it by any act, neglect or default.”

10) From the affidavit evidence, the applicant is the one who is in possession of the suit land even though the title document is said to be lying at the lands office Makeni. It is said to be in the name of one Mutuku Mutua who is unknown to the applicant. Taking into consideration that the applicant has made attempts to have the situation rectified, the second respondent was duty bound to give the applicant a hearing. In the circumstances, I am satisfied that the applicant has shown that he merits the grant of the prayers in the amended notice of motion. I, therefore, proceed to grant prayers (a), (b) and (c) of the amended notice of motion dated 7th October, 2014 and filed in court on 15th October, 2014.

Signed , dated and delivered at Makeni on 7th day of May , 2018

MBOGO C. G

JUDGE

Court: Ruling read aloud and dated in open court in the presence of;

Mr. Mulei holding brief for Mr. Muema Kituku for the applicant.

No appearance for the respondents

Mr. Kwemboi Court Assistant

MBOGO C. G

JUDGE

7/5/2018