



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 60 OF 2010**

**MBWELE MUOKI.....1<sup>ST</sup> PLAINTIFF**

**DENNIS MUOKI.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**JUSTUS MUTIE KIOKO.....DEFENDANT**

**JUDGMENT**

**The Plaintiffs' case:**

1. The 1<sup>st</sup> Plaintiff, PW1, informed the court that in the year 2004, they petitioned for the Grant of Letter of Administration of the deceased Estate vide Machakos High Court Succession Cause No. 76 of 2004 and that they were issued with a Grant on 14<sup>th</sup> October, 2004 which was confirmed on 30<sup>th</sup> November, 2009. It was the evidence of PW1 that in Succession Cause No. 76 of 2004, the court ordered that parcel number Makueni/Unoa/58 (*the suit land*) be registered in their joint names and that the suit property has since been registered in the joint names of the Plaintiffs.
2. It was the evidence of PW1 that the Defendant raised the issue of having bought the suit land in the Succession Cause and that the court found that he did not have a lawful interest in the suit property. According to PW1, despite the Ruling by the court, the Defendant has refused to vacate the suit land.
3. PW1 produced in evidence the Grant, the Certificate of Confirmation, the Title Deed and the Ruling delivered in Succession Cause No. 76 of 2004.
4. It was the evidence of PW1 that although her late husband was buried on the suit land, the Defendant has barred her from living on the suit land.
5. In cross-examination, PW1 stated that the Defendant has been living on the land for many years and that he vacated the suit land when the Defendant threatened her; that she filed a suit in the Land Disputes Tribunal in the year 2000 and that the Tribunal ruled in her favour.
6. The Defendant did not testify in the matter. The Plaintiffs' advocate filed submissions and submitted that the High Court sitting as a Probate and Administration court made a final determination on the issue of ownership of the suit land; that the court held that the Defendant did not have a legal interest in the suit land and that this suit was filed within a year from the date of the High Court's Ruling.
7. The evidence before me shows that the Plaintiffs were registered as the proprietors of parcel of land known as Makueni/Unoa/58 on 3<sup>rd</sup> December, 2009 in trust for themselves and other beneficiaries. According to the entries in the green card, the said registration was done on the basis of the order of the court vide High Court Succession Cause No. 76 of 2004.
8. Before the suit property was transferred to the Plaintiffs by transmission, the same was registered in favour of Muoki Muasya on 2<sup>nd</sup> August, 1967. The green card does not show that the land was ever registered in favour of the Defendant.
9. I have perused the Ruling in Machakos Succession Cause No. 76 of 2004 which was produced in evidence. The said Ruling was occasioned by the objection of the Defendant to the Plaintiffs' claim that they are the ones entitled to the suit land. The court considered the Defendant's oral evidence and held as follows:

**“ 3. Kioko admitted that he never bought the land from the deceased and so the matter is simple...**

**4. Since Kioko, Dennis Muoki nor Muli Kioko had no lawful interest in the deceased's Estate any attempt at disposing any part of it, two (2) years after his death (he died on 14<sup>th</sup> October, 1982), is unlawful as it amounts to intermeddling with it.**

**5. In any event, Justus Mutie Kioko has no lawful interest in this Estate and he can pursue a refund of his money from those that illegally received it.”**

10. Consequently, the court in the Succession matter directed that the suit land should be registered in the joint names of the Plaintiffs. Having not appealed against the said Judgment, the Defendant cannot raise the same issue that was raised in Succession Cause No. 76 of 2004 in this court.

11. Considering that the Plaintiffs were registered as proprietors of the suit land pursuant to a valid court order, they are entitled to the land to the exclusion of the Defendant. In any event, the Defendant did not prosecute his Counter-claim. The orders of a permanent injunction and/or a refund of the purchase price as against the 2<sup>nd</sup> Plaintiff cannot therefore issue.

12. For those reasons, I find that the Plaintiffs have proved their case on a balance of probability. I therefore allow the Plaint dated 24<sup>th</sup> March, 2010 and dismiss the Defendant's Counter-claim dated 26<sup>th</sup> April, 2010 with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 4<sup>TH</sup> DAY OF MAY, 2018.**

**O.A. ANGOTE**

**JUDGE**