



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 316 OF 2009**

**GEORGE MUTUNGA MUINDE.....PLAINTIFF**

**VERSUS**

**PAULINE MUMINA.....1<sup>ST</sup> DEFENDANT**

**EMMANUEL MWAKA MUMINA.....2<sup>ND</sup> DEFENDANT**

**MUTUNGA MUMINA.....3<sup>RD</sup> DEFENDANT**

**JOHN MUTIE MUMINA.....4<sup>TH</sup> DEFENDANT**

**KIOKO MUMINA.....5<sup>TH</sup> DEFENDANT**

**MULWA MUMINA.....6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. In the Amended Plaint dated 8<sup>th</sup> March, 2018, the Plaintiff averred that he is the registered proprietor of land known as land parcel number 1082 and 1126 Utangwa Adjudication Section (*the suit land*) having bought it from Mumina Ndolo in the year 1973; that on 22<sup>nd</sup> July, 2009, the Defendants trespassed on the suit land and attempted to sub-divide it and that the Plaintiff has been denied the peaceful use of the said land.

2. In the Plaint, the Plaintiff is praying for a declaration: that he is the rightful owner of the suit land; that the continued acts of cultivation, cutting down and uprooting of crops by the Defendants on the suit land is illegal; that he is entitled to damages for loss of user, *mesne profits* and general damages for trespass and that a perpetual order of injunction should issue.

3. In his Statement of Defence dated 12<sup>th</sup> November, 2009, the Defendants averred that the Plaintiff is not the absolute owner of the suit land; that they have filed objection proceedings in the Makueni District Land Adjudication office which objection is still pending and that this court does not have the jurisdiction to handle the dispute.

4. Although the Defendants were notified of the hearing date of the suit, they did not attend court to testify. It is only the Plaintiff who testified. The Plaintiff, PW1, informed the court that he bought parcel of land numbers 1082 and 1126, Utangwa Adjudication Section (*the suit land*) from James Mumina Ndolo (*deceased*) in 1976; that the suit land was transferred to him during the adjudication process and that there were objection proceedings against the deceased.

5. PW1 informed the court that the Defendants are family members of the deceased and are in occupation of parcel number 2970 which borders the suit properties and that the Defendants trespassed on the suit land in May, 2009 and October, 2009 and uprooted the original boundary.

6. According to PW1, the objection register is now complete and that the Defendants have been charged in Criminal Case Nos. 410 of 2009, 262 of 2010 and 320 of 2010 for trespass, amongst other offences.

7. PW1 produced in evidence several documents including the letter from the District Land Adjudication and Settlement Officer dated 22<sup>nd</sup> February, 2011, the proceedings and Judgment of parcel number 2970 Utangwa Adjudication Section and the proceedings and Judgment in Tawa RMCC No. 320 of 2010 and 30 of 2012, amongst other documents.

8. The Plaintiff's advocate submitted that after adjudication and the proceedings before the adjudication officer, the Defendants filed an Appeal against the decision of the Minister which was dismissed on 16<sup>th</sup> February, 2018 and that the Plaintiff has since received the title documents to the suit land.

9. The evidence before me shows that the Plaintiff purchased the two suit properties from the late Mumina Ndolo, who was the husband of the 1<sup>st</sup> Defendant and the father of the other Defendants. Although the said purchase was in 1973, it was not until 1994 that a dispute arose between the Plaintiff and the late Ndolo. In its decision, the Land Committee made a finding in favour of the Plaintiff. When the late Mumina Ndolo filed an Appeal with the Arbitration Board, the Board, in its decision of 4<sup>th</sup> May, 1998 agreed with the decision of the Committee.

10. It is evident from the documents before me that the Plaintiff won all the cases at the adjudication level and appeals, the latest being the decision of 16<sup>th</sup> February, 2018. The Plaintiff has since been issued with the Title Deeds for parcels of land known as Makueni/Utangwa/1082 and 1126. The two titles were issued on 31<sup>st</sup> August, 2015.

11. In the circumstances, I find that the Plaintiff has proved his case on a balance of probabilities, save on the issue of damages. For those reasons, I allow the Amended Plaint dated 8<sup>th</sup> March, 2018 as follows:

***a. A declaration be and is hereby issued that the Plaintiff is the rightful owner of the land parcel numbers 1082 and 1126, Utangwa Adjudication Section and the Defendants are trespassers on the said land.***

***b. A declaration be and is hereby issued that the Plaintiff is the rightful owner of land parcel numbers 1082 and 1126 Utangwa Adjudication Section and a portion of 2970 Utangwa Adjudication Section which is to be issued with a new number and Defendants are trespassers.***

***c. A declaration be and is hereby issued that the continued acts of cultivation, cutting down and uprooting of crops and other vegetation by the Defendants are illegal and or unlawful.***

***d. A perpetual order of injunction be and is hereby against the Defendants jointly and severally, their agents and or servants and or relatives from alienating, cultivating or trespassing thereto, continuing with further interference or entering, remaining and or trespassing in any way howsoever upon land parcel numbers 1082, 1126 Utangwa Adjudication Section and a portion of 2970 Utangwa Adjudication Section which is yet to be issued with a new number.***

***e. The Defendants to pay the costs of the suit.***

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2018.

O.A. ANGOTE

JUDGE