



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 55 OF 2016

GRANTON DAUDI WORESHA.....PLAINTIFF

VERSUS

MICHAEL MWOKI KILONZO (*Sued as the legal representative of*

JOHN KILONZO (*deceased*).....**1ST DEFENDANT**

NDIVO MICHAEL.....**2ND DEFENDANT**

JUDGMENT

1. In the Plaintiff dated 12th July, 2016, the Plaintiff is seeking for the following orders:

a. An order declaring that the Plaintiff is the legal and/or beneficial owner of the suit property comprised in Donyo Sabuk/Komarock Block 1/131.

b. Eviction and demolition orders of all the erected structures on Donyo Sabuk/Komarock Block 1/131 and the OCS or any other officer in charge of Mala Police Station to ensure the compliance of the orders.

c. In the alternative and without prejudice, the purchase price of the suit property be refunded at the current market rates upon the valuation of the suit premises.

d. A permanent injunction do issue against the Defendants, their agents, servants, employees and/or representatives stopping them from sub-dividing, selling, alienating, excavating and/or trespassing on the suit property and more particularly known as Donyo Sabuk/Komarock Block 1/131.

2. The Plaintiff has averred in the Plaintiff that at all material times, the late John Kilonzo was the proprietor of parcel of land known as Donyo Sabuk/Komarock Block 1/131; that by way of an Agreement dated 10th October, 2000, the deceased agreed to sell to the Plaintiff the suit land measuring 1.708Ha for Kshs. 290,000 and that they agreed that the Plaintiff would be paying a monthly sum of Kshs. 10,000.

3. It was averred in the Plaintiff that the Plaintiff paid the entire purchase price to the late John Kilonzo who then handed to the plaintiff the original Title Deed; that the deceased then filed Machakos HCCC No. 23 of 2001 and that during the subsistence of the said suit, the Defendants trespassed on the suit land.

4. In their joint Defence, the Defendants averred that there was no Agreement that was entered into between the deceased and the Plaintiff in respect to the suit land; that the Plaintiff never paid the alleged purchase price and that the suit should be dismissed.

5. In his evidence, the Plaintiff, PW1, informed the court that the 1st Defendant is the son of the late John Kilonzo who sold to him the suit land; that in the Agreement of 10th October, 2000, it was agreed that the sum of Kshs. 30,000 would be paid to the late John in cash at the execution of the Agreement; that the sum of Kshs. 10,000 was to be paid at the commencement of 30th November, 2000 until payment in full and that he paid the entire sum as agreed.

6. Other than the Agreement of 10th October, 2000, the Plaintiff informed the court that they entered into several other Agreements which are not related to the suit land which included the Agreements of 19th May, 2002 and 28th November, 2004 and that all the Agreements were in one book. The original book containing the said Agreements was produced in evidence.

7. According to PW1, the deceased gave him the original document. PW1 stated that the deceased sued the 1st Defendant in HCCC No. 23 of

2001 and that despite a court order restraining the 1st Defendant from developing the suit land, he still developed the land by putting up a permanent house.

8. In cross-examination, PW1 stated that the late John used to live on the land; that the land was not transferred to him because of the other pending suit and that it was only the son of the late John, the 1st Defendant, who resisted the said sale, together with his son, the 2nd Defendant.

9. The 1st Defendant, DW1, informed the court that he has lived on the suit land since the year 1971; that his later grandfather, Jacob Ndivo, acquired the suit land from Komarock Ranching Farmers Co-operative Society in the year 1963; that his late father John Kilonzo continued making payments to the Society and that he assisted his father to complete paying for the land.

10. According to DW1, his late father allocated to all his sons the land he had acquired in the Society and that he was allocated the suit land; that the rest of his siblings were allocated parcel number Donyo Sabuk/Komarock Block 1/7243 and that when he heard that his late father was selling the suit land, he reported the issue to the chief.

11. The Defendant's son, DW2, informed the court that he was born on the suit land in 1977; that he has his house on the land and that the land has three (3) houses belonging to their family. DW2 informed the court that the suit land is registered in his grandfather's name and that his late grandfather gave to his father the suit land by way of a letter.

12. In her submissions, the Plaintiff's advocate submitted that the court in Machakos HCCC No. 23 of 2001 made a finding that the 1st Defendant occupied the suit land as a licensee; that the 1st Defendant has been relocated to parcel number 7243 and that the Defendants have not established a cognizable interest in the suit land.

13. The Defendants' counsel submitted that the Defendants have lived on the suit land for many years; that they do not have any other land to live on and that the suit by the Plaintiff should be dismissed.

14. The evidence before this court shows that parcel of land known as Donyo Sabuk/Komarock Block 1/131 was registered in favour of the late John Kilonzo on 24th September, 1993. According to the Plaintiff, the late John Kilonzo acquired the suit land from Komarock Ranching Society Limited and that he sold to him the suit land vide an agreement dated 10th October, 2000.

15. The original Agreement showing the payments that the Plaintiff made towards the purchase of the suit land have been produced. In addition, and to show that he had sold the suit land to the Plaintiff, the late John Kilonzo gave to the Plaintiff the original Title Deed for the suit land which he still holds.

16. It would appear that the 1st Defendant, who is the son of the seller, has always resisted his father selling the suit land. Indeed, the late John Kilonzo sued the Defendants in Machakos HCCC No. 23 of 2001 in which he sought for a declaration that he is the sole proprietor of the suit land.

17. In his Complaint in Machakos HCCC No. 23 of 2001, the late John Kilonzo averred that he had settled his entire family on a parcel of land known as Donyo Sabuk/Komarock Block 1/7243 in 1995 and that the Defendant unlawfully cautioned the suit land. In his Ruling in respect of the Application for injunction by the late John Kilonzo, the court found the Plaintiff (*John Kilonzo*) being the registered proprietor of the land and could therefore deal with the suit land as he deemed fit.

18. The Complaint in Machakos HCCC No. 23 of 2001 and the letter dated 9th January 1988 which was produced by the Plaintiff shows that the late John Kilonzo distributed his land being parcel number 7243 among his two wives.

19. The letter shows that one of the wives (*Nelly*) was allocated 25 acres, and was supposed to sub-divide and distribute it amongst her sons, while the other wife, Yula, was given 20 acres. That letter was signed by all family members, including the 1st Defendant.

20. The evidence before me shows that the late John Kilonzo lawfully sold the suit land to the Plaintiff. The Defendants were settled on a different piece of land by the late John Kilonzo. Considering that the suit land was registered in the name of the late John Kilonzo and in the absence of evidence to show that the late John Kilonzo held the suit land in trust for the Defendants, I find and hold that the Plaintiff has proved his case on a balance of probabilities.

21. Consequently, I allow the Complaint dated 12th July, 2016 as follows:

a. The Plaintiff be and is hereby declared the beneficial owner of land known as Donyo Sabuk/Komarock Block 1/131.

b. A permanent injunction be and is hereby issued against the Defendants, their agents, servants, employees and or representatives from trespassing, selling, alienating or dealing with the suit land.

c. An order of eviction and demolition of all the erected structures on parcel of land known as Donyo Sabuk/Komarock Block 1/131 be and is hereby issued.

d. The OCS, Mala Police Station to ensure compliance of the orders above.

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

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 21ST DAY OF SEPTEMBER, 2018.

O.A. ANGOTE

JUDGE