



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 32 OF 2016**

**ELIZABETH MBATHA KITUKU.....1<sup>ST</sup> PLAINTIFF**

**LUCY WAVINYA KITUKU .....2<sup>ND</sup> PLAINTIFF**

*(All suing as the Administrators of the Estate of the late Martin Sikuku Kituku)*

**VERSUS**

**STEPHEN MUTISYA KISWII.....1<sup>ST</sup> DEFENDANT**

**ANTHONY MUTISO KOMU.....2<sup>ND</sup> DEFENDANT**

*(All sued as the Administrators of the Estate of the late Philip Komu Kiswii)*

**JUDGMENT**

1. In the Complaint dated 12<sup>th</sup> May, 2016, the Plaintiffs averred that the late Martin Sikuku bought a parcel of land known as Mavoko Town Block 3/2842 from the late Philip Komu Kiswii vide an Agreement dated 9<sup>th</sup> October, 2000; that the late Philip wrote to Lukenya Ranching informing them about the sale and that the late Sikuku was issued with a letter of allotment No. 4552 by Lukenya Ranching Society.
2. The Plaintiffs further averred that the seller later on fraudulently misrepresented the ownership details to the Ministry of Lands and obtained a Title Deed in his name and that the Defendants have since taken out Letters of Administration in Succession Cause No. 723 of 2012 with a view of distributing the Estate of Philip Kiswii without disclosing the Plaintiffs' interests in the suit land.
3. In the prayers, the Plaintiffs are seeking for a declaration that the Estate of the late Philip Komu Kiswii holds the suit land in trust for them and that the Title Deed in respect to the suit land was acquired by the late Philip Kiswii illegally, unprocedurally and fraudulently.
4. Although the Defendants were served, they neither entered appearance nor filed a Defence. The matter proceeded for hearing in their absence on 20<sup>th</sup> March, 2018.
5. The 1<sup>st</sup> Plaintiff, PW1, informed the court that her late husband purchased the suit land from the late Kiswii; that he paid for plot number 305 in installments with the last installment being made on 10<sup>th</sup> October, 2000 and that the parties signed a Declaration of Completion of Sale.
6. It was the evidence of PW1 that her late husband paid all the requisite transfer fees as assessed by Lukenya Ranching and Farming Co-operative Society Limited and that the letter of allotment No. 4552 to the late Philip Komu was amended to reflect the Transfer of 20 acres to Mr. Sikuku. However, according to the 1<sup>st</sup> Plaintiff, the seller took out the title to the suit land in his name.
7. PW1 produced in evidence the Agreement dated 9<sup>th</sup> October, 2000 between the late Philip Komu and Martin Sikuku in respect of land number 305; the Transfer document duly signed by the deceased and witnessed by the Chief of Lukenya Location dated 8<sup>th</sup> November, 2000 and the Letter of Allotment signed by Lukenya Ranching.
8. In his submissions, the Plaintiffs' advocate submitted that with the sale of the land to the late Mr. Sikuku, Mr. Komu became a constructive trustee of the former; that the Plaintiffs have been in occupation of the land and that the Complaint should be allowed as prayed.
9. The Defendants have not controverted the Plaintiffs' assertion that Mr. Sikuku purchased the suit land from Mr. Komu for Kshs. 690. The Plaintiffs produced in evidence the Sale Agreement of 9<sup>th</sup> October, 2000 evidencing the sale. The Plaintiffs further produced the Transfer document and the Letter of Allotment showing that Lukenya Ranching Society recognized the purchaser as the owner of the suit.

10. Consequently, the uncontroverted evidence before me shows that having performed the Agreement of 9<sup>th</sup> October, 2000, the Title Deed that was issued to the late Mr. Komu was issued either fraudulently or by mistake.

11. For the reasons I have given above, I find that the title document that is held by the Defendants are being held in trust of the Plaintiffs and ought to transfer the title to Plaintiffs. In that respect, I allow the Plaint dated 12<sup>th</sup> May, 2016 in the following terms:

**a. A declaration be and is hereby issued that the Estate of the late Philip Komu Kiswii holds L.R. No. Mavoko Town Block 3/2842 in trust for the Plaintiffs.**

**b. A declaration be and is hereby issued that the Estate of the late Martin Sikuku Kituku is the bona fide owner and/or beneficial owner of the land known as L.R. No. Mavoko Town Block 3/2842 and the subsequent title in favour of the late Philip Komu Kiswii is null and void.**

**c. A declaration be and is hereby issued that the Title Deed for L.R. No. Mavoko Town Block 3/2842, in favour of the late Philip Komu Kiswii was acquired illegally, unprocedurally, is rooted in fraud and/or misrepresentation of facts and therefore the Estate of the late Philip Komu Kiswii has no legitimate proprietary right over the same.**

**d. A permanent injunction be and is hereby issued restraining the Defendants whether by themselves or their servants or agents from dealing, constructing, disposing, trespassing, interfering, charging and/or whatsoever dealing with L.R. No. Mavoko Town Block 3/2842.**

**e. A permanent injunction be and is hereby issued restraining the Defendants whether by themselves or their servants or agents from evicting and/or interfering with the Plaintiffs' quiet possession over L.R. No. Mavoko Town Block 3/2842.**

**f. An order be and is hereby issued directing the Defendants to unconditionally transfer the title in L.R. No. Mavoko Town Block 3/2842 to the Plaintiffs.**

**g. Costs of the suit to be paid by the Defendants.**

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 26<sup>TH</sup> DAY OF OCTOBER, 2018.**

**O.A. ANGOTE**

**JUDGE**