



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 202 OF 2017

FORMERLY MERU ELC. 198 OF 2013

JACOB MAKUNYI BERECE.....PLAINTIFF

VERSUS

DIEGO NKAMBI.....DEFENDANT

JUDGMENT

1. The plaintiff in his plaint dated **22nd July, 2013** seeks judgment against the defendant for:

- a. An order cancelling the registration of L.R. No. Tharaka/Nkondi 'A'/248 in the name of the defendant.
- b. Rectification of the register so as to have L.R. No. Tharaka/Nkondi 'A'/248 registered in the name of the plaintiff.
- c. Costs of the suit.

2. The suit was allocated the **25th of September, 2018** as its hearing date. On that day, Mr. Murango Mwenda, the plaintiff's advocate told the court that he was ready to participate in the scheduled hearing. Mr. Nyamu Nyaga, the defendant's advocate told the court that he was not ready to participate in the proceedings because he had lost touch with his client, the defendant.

3. Taking cognizance of the fact that this suit was filed over five years ago, I found it necessary to invoke the provisions of order 12 of the Civil Procedure Rules. I determined that the defendant, through his advocate, was aware of the date fixed by this court for the hearing of the suit. I directed that the suit should proceed ex parte and the plaintiff was called upon to prove his case.

4. PW1, Jacob Makunyi Berece, the plaintiff, asked the court to admit his witness statement dated **2nd July, 2013** and **27th July, 2018** as his evidence in this suit. In his statement, the plaintiff claims that the registration of his parcel of land No. NKONDI 'A'/248 in the defendant's name was done fraudulently. He avers that he has developed the suit land extensively and has a permanent house thereon. He also avers that he has planted many exotic trees, bananas, and mango trees thereon. He asked the court to grant to him the orders sought in his plaint and costs of the suit. The plaintiff produced as his Exhibit No. 1 a search certificate concerning the suit land. He also produced as Exhibit 2, a sale agreement dated 13th June, 1988 through which he bought the suit land.

5. I have considered the evidence adduced by the plaintiff. I find that he has proved his case to the satisfaction of the court on a balance of probabilities.

6. Judgment is entered for the plaintiff against the defendant in the following terms.

- a. An order of cancellation of the registration of L.R. No. Tharaka/Nkondi 'A'/248 is issued to the Land Registrar in charge of registration of this parcel of land so that the name of the defendant DIEGO NKAMBI MUGAMBI is forthwith removed from the apposite register.
- b. An order is issued to the Land Registrar in charge of the register apposite to L.R. NO. Tharaka/Nkondi/ 'A'/248 to appropriately rectify the register and that L.R. No. Tharaka/Nkondi 'A'/248 be registered in the name of the plaintiff, JACOB MAKUNYI BERECE, forthwith.
- c. Costs of this suit are awarded to the plaintiff.

Delivered in open court at Chuka this **22nd day of October, 2018** in the presence of:

CA: Ndegwa

Murango Mwenda for the plaintiff

Defendant and his advocate - absent

P.M. NJORGE

JUDGE