



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 222 OF 2017**

LAWRENCE NDUVA MUNYAKA.....1<sup>ST</sup> PLAINTIFF  
JOHN NTHULI MAKENZI.....2<sup>ND</sup> PLAINTIFF  
JAMES NTHEI NTHOMI.....3<sup>RD</sup> PLAINTIFF  
ISAAC MUNYAO KISINI.....4<sup>TH</sup> PLAINTIFF  
SOLOMON SIMBA.....5<sup>TH</sup> PLAINTIFF  
AUGUSTINE N. MUTUKU .....6<sup>TH</sup> PLAINTIFF  
PAUL KAHUGU.....7<sup>TH</sup> PLAINTIFF  
JOSEPH M. KITONYI.....8<sup>TH</sup> PLAINTIFF  
GRACE SYOMBONZE MUIA.....9<sup>TH</sup> PLAINTIFF  
ROMAN MUTHUSI.....10<sup>TH</sup> PLAINTIFF  
MUNGA KINUTHIA.....11<sup>TH</sup> PLAINTIFF  
NGIGE KARIUKI.....12<sup>TH</sup> PLAINTIFF  
KAWINZI PAUL MUTHIANI.....13<sup>TH</sup> PLAINTIFF  
BEATRICE KATHINI.....14<sup>TH</sup> PLAINTIFF  
LUKAS MUNYANZA MUTUA.....15<sup>TH</sup> PLAINTIFF  
BEATRICE ANYANGO NDETTO.....16<sup>TH</sup> PLAINTIFF  
GEORGE MUINDE NYUMU.....17<sup>TH</sup> PLAINTIFF  
ANTHONY MUSAU MUTHUSI.....18<sup>TH</sup> PLAINTIFF  
TERESIA WAMBURA MUTIE.....19<sup>TH</sup> PLAINTIFF  
BENSON MWANIA MWANZIA.....20<sup>TH</sup> PLAINTIFF  
FRANCIS MUTUA MUSYIMI.....21<sup>ST</sup> PLAINTIFF  
TIBERIUS MIROMBI OBONYO.....22<sup>ND</sup> PLAINTIFF

VERSUS

JOSEPH KAWINZI.....1<sup>ST</sup> DEFENDANT  
PAUL MUTHIANI.....2<sup>ND</sup> DEFENDANT  
KAWINZI MUTHIANI.....3<sup>RD</sup> DEFENDANT  
ANTONY MUSAU.....4<sup>TH</sup> DEFENDANT  
BENJAMIN WAMBUA.....5<sup>TH</sup> DEFENDANT  
PETER MWAKA.....6<sup>TH</sup> DEFENDANT

RULING

1. In the Amended Application dated 28<sup>th</sup> June, 2016, the Plaintiffs are seeking for the following orders:

*a. That pending the hearing and determination of this suit, compelling orders be issued directing the Registrar of Lands Machakos to execute and process Title Deeds for the relevant parcels of land Machakos L.R. No. 774/ Komarock-Tala in reference to the contract and the full purchase price paid to the Respondents.*

*b. That compelling orders be issued directing the Respondents to provide completion documents and execute the transfer documents to facilitate transfer of the parcels of land Machakos L.R. No. 774/Komarock-Tala and issuance of titles.*

*c. That an order of specific performance be issued directing the Respondents to their duties under the Sale Agreement and specifically to avail the completion documents and execute the transfer documents in reference to the parcel of land known as L.R. No. 774 Komarock-Tala.*

*d. The costs of this Application be awarded to the Plaintiff/Applicant.*

2. The Application is supported by the Affidavit of the 1<sup>st</sup> Plaintiff who has deponed that the Plaintiffs are bona fide purchasers of a parcel of land known as plot number 774-Komarock Tala which forms part of the Estate of Paul Muthiani Musau; that the Defendants are the lawful beneficiaries of the Estate of Paul Muthiani and that the Plaintiffs bought the land from the beneficiaries of the Estate of Paul Muthiani.

3. The 1<sup>st</sup> Plaintiff deponed that since the Applicants paid the full purchase price for the suit land, the Respondents have neglected, refused and or been reluctant to execute the transfer documents to the Plaintiffs.

4. In their joint Replying Affidavit, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants deponed that they are beneficiaries of the Estate of the late Paul Muthiani; that it is true that the suit land was sub-divided and each beneficiary was given his portion of land; that some of the beneficiaries sold their respective portions of land before the titles were issued and that it is the 4<sup>th</sup> Defendant who has refused to co-operate to have the titles pass to the Vendor.

5. The three Defendants deponed that they are ready and willing to co-operate and comply with the orders of this court. According to the three Defendants, they do not oppose the prayers that have been sought in the current Application.

6. On his part, the 4<sup>th</sup> Defendant deponed that the Plaintiffs do not have a recouse against him because he did not execute the Sale Agreements with any of them; that the Applicants have not demonstrated through documentation how they purchased portions of the suit land and that none of Defendants and the other beneficiaries of the Estate of Paul Muthiani can transfer the suit property.

7. According to the 4<sup>th</sup> Defendant, the issue of the distribution of the Estate of the deceased is still pending in court and that the current Application lacks merit.

8. In his submissions, the Plaintiffs' advocate submitted that the Defendants are lawful beneficiaries of the Estate of Paul Muthiani Musau; that the Defendants had the capacity to sale the suit land to the Applicants and that the Defendants derived their right to sell the land from the order of the High Court in which the Estate of Paul Muthiani was divided among all the beneficiaries.

9. The Plaintiffs' counsel submitted that there are special circumstances for an order of mandatory injunction to issue; that the 4<sup>th</sup> Defendant was involved in the transaction of the sale of the suit land to the Plaintiffs and that this is a clear case where a mandatory injunction should issue.

10. The Plaintiffs' counsel submitted that the 4<sup>th</sup> Defendant personally sold and received the full purchase price from one Amedeo Muug'eri and that the Applicants have the right to receive their respective titles. Counsel relied on numerous authorities which I have considered.

11. The 4<sup>th</sup> Defendant's advocate submitted that the beneficiaries to the Estate of the late Paul have not sold their respective shares, neither

have they given their authority to the four (4) Defendants to sell the said land on their behalf; that in High Court Succession Cause Number 667 of 1994, it was realised that there was intermeddling with the deceased Estate and that the court declared all previous transactions null and void.

12. Counsel submitted that the Estate of the deceased is yet to be distributed by the court; that there is no valid contract between the Plaintiffs and the Defendants to be enforced and that the Plaintiffs did not undertake due diligence before entering into the alleged agreements with the Defendants.

13. The Application before me is seeking for mandatory orders of injunction in which the Plaintiffs want this court to compel the Defendants to avail to them completion documents and execute the transfer documents in respect of land reference number 774 Komarock-Tala (*the suit land*).

14. The orders being sought by the Plaintiffs are based on the ground that between the year 1990 and 2013, they bought the suit land from the beneficiaries of the Estate of Paul Muthiani. In support of this assertion, the Plaintiffs annexed on their Supporting Affidavit the Agreement dated 22<sup>nd</sup> July, 2013 between the 7<sup>th</sup> Plaintiff and the 1<sup>st</sup> Defendant. The said agreement is in respect of 15 acres of the suit land.

15. The other agreements annexed on the Supporting Affidavit are dated 16<sup>th</sup> May, 2013; 7<sup>th</sup> October, 2011 and several acknowledgment slips.

16. From the annexed Sale Agreements, it would appear that the Vendor was one Kawinzi Paul Muthiani while the purchaser was Paul Kahugu. The Agreements in respect of the other Plaintiffs have not been annexed on the Supporting Affidavit. The Plaintiffs have not also annexed the Agreements that were signed by all the beneficiaries of the Estate of the late Paul, if at all.

17. Although the 1<sup>st</sup>-3<sup>rd</sup> Defendants have claimed that they are the administrators of the Estate of Paul and that they were lawfully authorized by the court to sell the suit property to the Plaintiffs, they have not annexed the order of the court that authorized them to sell the said land. Indeed, there is no evidence before me to show that the Estate of the late Paul has been distributed by the Succession Court to all the beneficiaries to enable the said beneficiaries transfer by transmission their respective portions to the Plaintiffs or at all.

18. Having failed to show to this court the decision of the court that mandated them to sell the suit land, and without going into the merits of the Succession Cause in respect of the Estate of the late Paul Muthiani, I find that the purported sell of the suit land to the Plaintiffs by the Defendants, either jointly or severally before the suit land could be distributed to all the beneficiaries of the Estate, amounts to intermeddling with the said Estate. Section 44 of the Law of Succession criminalizes intermeddling with the Estate of a deceased person.

19. In the circumstances, I find that the Plaintiffs have not established a prima facie case with chances of success. The Amended Application dated 28<sup>th</sup> June, 2016 is therefore dismissed with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 12<sup>TH</sup> DAY OF OCTOBER, 2018.**

**O.A. ANGOTE**

**JUDGE**