



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 43 OF 2016

BERNARD MBOLE KAVOO.....1ST PLAINTIFF

MUTUNGA MUSYOKI.....2ND PLAINTIFF

DAVID MUTUKU NZAU.....3RD PLAINTIFF

VERSUS

LUKENYA RANCHING AND FARMING CO-OPERATIVE

SOCIETY LTD.....1ST DEFENDANT

JOHN KIMANI MWEGA2ND DEFENDANT

MACHAKOS DISTRICT LAND REGISTRAR....3RD DEFENDANT

JOSIAH MAKAU NZIOKA4TH DEFENDANT

JUDGMENT

1. In the Plaint dated 27th January, 2016, the Plaintiffs have averred that the 2nd Plaintiff was entitled to land measuring 20 acres of land by virtue of his shareholding in the 1st Defendant; that the 2nd Plaintiff was among the original shareholders of the 1st Defendant and that the 1st Defendant was registered as the proprietor of land measuring 60,000 acres in 1963.

2. The 2nd Plaintiff averred that being one of the original shareholders of the 1st Defendant, he was allocated 20 acres of land in the Lukenya Ranch which land was initially designated as Plot Number 45 by the 1st Defendant; that in 2013, he discovered that his land had been illegally and irregularly registered in the 2nd Defendant's name and that the 4th Defendant was later unlawfully registered as the proprietor of land measuring 8.8501Ha.

3. In addition to the 20 acres that was allotted to the 1st Plaintiff, the Plaintiffs averred that they were allotted share certificate number 306 by the 1st Defendant; that the 2nd Plaintiff was entitled to 5 acres of land within the 1st Defendant and that through fraud, the 4th Defendant sold the said land to the 2nd Defendant.

4. The Plaintiffs finally averred that the 2nd Defendant's ownership of parcel of land known as Mavoko Town Block 3/3342 which comprises of a parcel of land number 45 is irregular and unlawful; that the 2nd Plaintiff sold the said land to the 3rd Plaintiff for Kshs.140,000 in 1992; that the 3rd Plaintiff then re-sold 5 acres of the land to the 1st Plaintiff on 16th November, 1997 and that the 2nd and 4th Defendants were not shareholders of the 1st Defendant. The Plaintiffs' prayers in the Plaint are:

i. That the court orders that the Defendants' actions leading to the issuance of title number Mavoko Town Block 3/3342 are illegal;

ii. That Title number Machakos Town Block 3/3342 be invalidated and cancelled by the 3rd Defendant or any Registrar having powers to do so under the law;

iii. That the 1st and 3rd Defendants be compelled to cause to be processed a title in favour of the 1st Plaintiff or any of the Plaintiffs forthwith;

iv. That the 1st, 2nd and 4th Defendants be ordered to compensate the 1st Plaintiff for the costs of the development, which was demolished and destroyed by the 2nd and 4th Defendants.

v. Costs of the suit.

5. The Defendants were served with the Summons to Enter Appearance through advertisement in the Nation newspaper of 28th September, 2016. However, they never entered appearance nor filed a Defence.

6. The 3rd Plaintiff, PW1, informed the court that he bought 20 acres of a piece of land number 45 in Lukenya Ranch from the 2nd Plaintiff in 1992; that in 1997, he sold 5 acres of the same land to the 1st Plaintiff, 4 acres to Patrick Ndolo Mwololo, 2 acres to Nzili Kingola and that he retained the remaining 4 acres.

7. According to PW1, the 1st Plaintiff's land was alienated by the 2nd Defendant and was registered as part of land known as Mavoko Town Block 3/3342. According to the 3rd Plaintiff, the 5 acres within parcel number 45 which belonged to the 1st Plaintiff should not be owned as a portion of the suit property by the 2nd Defendant.

8. The 1st Plaintiff, PW2, informed the court that he purchased parcel of land number 3342 measuring 5 acres situated within Lukenya from the 3rd Plaintiff; that he developed the land to the tune of Kshs.5.6Million and that he later on found that the Title Deed to the land had been issued to the 4th Defendant.

9. The Plaintiffs' advocate submitted that the 2nd Plaintiff (*deceased*) was one of the initial members of the 1st Defendant; that the 2nd Plaintiff sold the suit land to the 3rd Plaintiff in 1992 who then sold it to the 1st Plaintiff in 1997. Counsel submitted that the 4th Defendant had the land fraudulently registered in his name.

10. The Plaintiffs' counsel submitted that the Defendants did not defend the suit and that the prayers in the Complaint should be allowed.

11. The evidence by 3rd Plaintiff is that he purchased the suit land from the 2nd Plaintiff (*deceased*) who was one of the initial members of the 1st Defendant. According to the 3rd Plaintiff, after the purchase of the land from the 2nd Plaintiff, the 1st Defendant issued him with a letter of allotment number 961 which he produced in evidence. The land that was allocated to the 3rd Plaintiff by the 1st Defendant is parcel number 45.

12. The 3rd Plaintiff produced in evidence the Sale Agreement that he entered into with the 2nd Plaintiff dated 6th January, 1992. The 3rd Plaintiff also produced in evidence the Agreement that he entered into with the 1st Plaintiff in respect of land measuring 5 acres which the 1st Plaintiff developed.

13. The evidence before me shows that none of the Defendants have ever occupied the suit land. Although parcel of land number Mavoko Town Block 3/3342 was registered in favour of the 2nd Defendant on 28th May, 2013, there is no evidence to show that the said Title Deed was ever issued to him.

14. Indeed, the Defendants have not controverted the evidence of PW1 and PW2 that parcel of land known as Mavoko Town Block 3/3342 measuring approximately 8.8501Ha (22 acres) is the same land that was allocated to the 2nd Plaintiff by the 1st Defendant. Having not shown how the Title Deed for parcel number 3/3342 was acquired, I find and hold that the Plaintiffs have proved that the said Title Deed was procured fraudulently.

15. For those reasons, I allow the Plaintiffs' Complaint dated 27th January, 2016 as follows;

a. An order be and is hereby issued that the Title Deed in respect of a parcel of land known as Machakos Town Block 3/3342 was procured unlawfully and the same is null and void.

b. The 3rd Defendant be and is hereby directed to cancel the Title Deed in respect of Mavoko Town Block 3/3342 and the said title to be registered in the name of the 1st Plaintiff in the first instance.

c. The 2nd and 4th Defendants to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 16TH DAY OF NOVEMBER, 2018.

O.A. ANGOTE

JUDGE