



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 326 OF 2017**

**KALEWA KIMEU MASAKA.....1<sup>ST</sup> PLAINTIFF**

**ALFONCE MUEMA KIMEU.....2<sup>ND</sup> PLAINTIFF**

*(Suing as the Administrators Ad-litem of the Estate*

*of the late Kimeu Masaka Kavuta)*

**VERSUS**

**KATHANZU NGUNZI.....1<sup>ST</sup> DEFENDANT**

**KIOKO NGUNZI.....2<sup>ND</sup> DEFENDANT**

**NTHUSI NGUNZI.....3<sup>RD</sup> DEFENDANT**

**AND**

**MACHAKOS COUNTY SURVEYOR.....INTERESTED PARTY**

**JUDGMENT**

1. In the Plaintiff dated 25<sup>th</sup> July, 2017, that Plaintiffs averred that land known as Kinyaata/Ikombe A/832 is registered in the name of the late Kimeu Masaka Kavuta; that the land was previously known as Plot Number 824 bordering Plot Number 823 belonging to the late Ngunzi Nzeki Nthusi and that Plot Number 824 was subjected to a protracted boundary dispute while under adjudication, which dispute was resolved by the Minister in Appeal No. 723 of 1985

2. The Plaintiffs averred that it was on the strength of the decision of the Minister that the late Kimeu Masaka was registered as the proprietor of the suit land; that the Defendants are only entitled to lay claim over their family land which is parcel of land known as Kinyaata/Ikombe A/823 and that the Defendants have unlawfully continued to occupy the suit land.

3. The Plaintiffs have sought for a declaration that parcel of land number Kinyaata/Ikombe A/824 measuring approximately 44.0Ha is the property of Kimeu Masaka and that the boundaries of parcel number 824 and 823 should be fixed by the Surveyor.

4. The Defendants entered appearance in this matter on 22<sup>nd</sup> August, 2017. However, they never filed a Defence. The matter proceeded for hearing as undefended on 30<sup>th</sup> July, 2018.

5. The 2<sup>nd</sup> Plaintiff, PW1, informed the court that his late father, Kimeu Masaka Kavuta, died in the year 2003; that his late father is the registered proprietor of land known as Kinyaata/Ikombe A/824 measuring 44.0Ha and that the said land was registered in his favour after the hearing and determination by the Minister in Appeal Case No. 723 of 1985. PW1 informed the court that the boundaries of parcel number 824 viz-a-viz parcel number 823 owned by the Defendants should be fixed by the Surveyor. PW1 produced in evidence the documents in support of their claim.

6. The 1<sup>st</sup> Plaintiff, PW2, informed the court that the 2<sup>nd</sup> Plaintiff is her son and that the late Kimeu Masaka is her late husband. According to the evidence of PW2, the suit property is registered in favour of the late Kimeu and that the Defendants are entitled to parcel number 823 and not 824. The Plaintiffs' advocate filed submissions which I have considered.

7. The evidence before me shows that the late Kimeu Masaka Kavuta was registered as the proprietor of land known as Kinyaata/Ikombe

A/824 measuring 44.0Ha on 18<sup>th</sup> August, 1988 and was issued with a Title Deed for the said land on 16<sup>th</sup> November, 1988. The search produced by the Plaintiffs shows that Ngunzi Nzeki Nthusi, the Defendants' patriarch, was registered as the owner of parcel number 823 on 18<sup>th</sup> August 1988 and a Title Deed was issued to him on 24<sup>th</sup> October, 1988.

8. The Defendants have not rebutted the Plaintiffs' evidence that they are entitled to the suit land. The Defendants have also not objected to the prayer by the Plaintiffs to have the boundaries in respect of parcel numbers 824 and 823 fixed and for demolition of any structures that they have put up on parcel number 824.

9. Based on the evidence before me, I find that the Plaintiffs have proved their case on a balance of probabilities. The Plaintiffs did not however prove the claim of general damages. I therefore allow the Plaintiffs' Plaint dated 25<sup>th</sup> July, 2017 as follows:

***a. A declaration be and is hereby issued that the entire land title number Kinyaata/Ikombe A/824 measuring 44.0 Ha or thereabouts is the property of Kimeu Masaka Kavuta and an order be and is hereby issued directing the County Surveyor, Machakos to visit the said parcel and determine, ascertain and/or fix its boundaries on the ground as against land title number Kinyaata/Ikombe A/823.***

***b. An order of permanent injunction be and is hereby issued restraining the Defendants whether by themselves, their families, their servants and or agents or others whosoever from continuing with their acts of trespass complained of in land title number Kinyaata/Ikombe A/824.***

***c. An order be and is hereby issued directing the Defendants to demolish and remove the illegal structures and crops on land title number Kinyaata/Ikombe A/824 at their own cost and in default the Plaintiffs be at liberty to remove the illegal structures and crops on the suit property at the Defendants' cost within sixty (60) days of today's date.***

***d. An order of eviction of the Defendants and their families from Land Title Number Kinyaata/Ikombe A/824 be and is hereby issued.***

***e. Costs of this suit to be paid by the Defendants.***

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 10<sup>TH</sup> DAY OF DECEMBER, 2018.**

**O.A. ANGOTE**

**JUDGE**