



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 51 OF 2016**

**JOSPHINE KASYOKA MUSINGI.....PLAINTIFF**

**VERSUS**

**BENSON NZOKA LAU.....DEFENDANT**

**JUDGMENT**

1. In her Complaint dated 4<sup>th</sup> July, 2016, the Plaintiff averred that on 16<sup>th</sup> February, 2010, she purchased a portion of undemarcated parcel of land from Peter Kitaa Musembi for Kshs. 70,000; that the portion of land she bought lies between the Defendant's parcel of land and the remaining land belonging to Peter Kitaa Musembi and that the area was declared an adjudication section in the year 2011.
2. The Plaintiff has averred in her Complaint that during the adjudication process, the parcel of land that the Defendant resides on was registered as parcel number Simisi/Ilamba/35 while the land that she bought was registered as parcel number 34 but in the Defendant's name.
3. It is the Plaintiff's case that the registration of her parcel of land as Simisi/Ilamba/34 and that of the Defendant as Simisi/Ilamba/35 was made by mistake; that the register should be rectified in respect of the two parcels of land and that the Complaint should be allowed. Although the Defendant was served with the Summons to Enter Appearance and the Complaint, he neither entered appearance nor filed a Defence.
4. The matter proceeded for hearing on 2<sup>nd</sup> March, 2017.
5. In her evidence, the Plaintiff reiterated the contents of her Complaint which I have summarized above.
6. It was the evidence of PW1 that she bought her parcel of land from Peter before the area was declared an adjudication area; that her land is in between the Defendant's land and the remaining portion of Peter Musembi's land and that there was a mix up of numbers during the adjudication process that commenced in the year 2011.
7. PW1 produced in evidence the Registry Index Map which indicates her parcel of land as parcel number 34 while the Defendant's parcel of land is indicated as parcel number 35.
8. However, it was the evidence of PW1 that when the Title Deeds were issued, she was registered as the proprietor of parcel number 35 instead of parcel number 34 while the Defendant was registered as the proprietor of parcel number 34 instead of parcel number 35. PW1 produced in evidence the copies of the official searches in respect of the two parcels of land.

9. The person who sold to the Plaintiff the land that she is currently occupying, PW2, informed the court that the Plaintiff is the proprietor of parcel of land number 34 and not 35; that it is the Plaintiff who is his immediate neighbour and not the Defendant and that the register in respect of the two parcels of land should be rectified.

10. As I have stated above, the Defendant did not file a Defence to rebutt the Plaintiff's assertion.

11. The Plaintiff and PW2 have shown by way of evidence that it is the Plaintiff who is occupying parcel of land number 34, which is in between the land that the Defendant is occupying (*parcel number 35*) and the land belonging to PW2 (*parcel number 36*).

12. The uncontroverted evidence before the court shows that the Defendant and the Plaintiff were registered as the proprietors of parcel of land numbers 34 and 35 respectively by mistake.

13. Instead, the Plaintiff should have been registered as the proprietor of parcel of land number 34 while the Defendant should have been registered the owner of parcel of land number 35.

14. In the circumstances, the register in respect of the two parcels of land should be rectified to reflect the correct position viz-a-viz the Registered Index Map and the parties herein.

15. For those reasons, I allow the Plaintiff's Plaint dated 4<sup>th</sup> July, 2016 as follows:

***a) An order of cancellation of the registration of Benson Nzoka Lau as the proprietor of land parcel number Simisi/Ilamba 34 and his registration as the proprietor of land parcel number Simisi/Ilamba/35 be and is hereby issued.***

***b) An order for cancellation of the registration of Josephine Kasyoka Musingi as the proprietor of land parcel number Simisi/Ilamba/35 and her registration as the proprietor of parcel of land number Simisi/Ilamba/34 be and is hereby issued.***

***c) The Defendant to pay the costs of the suit.***

**DATED AND DELIVERED AT MACHAKOS THIS 24<sup>TH</sup> DAY OF MARCH, 2017.**

**OSCAR A. ANGOTE**

**JUDGE**