



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

CIVIL SUIT NO. 111 OF 2006

MOSES MUNYWOKI MWENDWA1ST PLAINTIFF

JOYCE MUENI KASWII2ND PLAINTIFF

VERSUS

JOHN MUTUA MUASYA1ST DEFENDANT

JULIUS NYELE2ND DEFENDANT

JUDGMENT

1. In their Complaint dated 16th November, 2006, the Plaintiffs averred that they are the legal owners of plot number 1758 Mukuyuni Adjudication Section in Makueni; that the Defendants have trespassed on their land and that a mandatory injunction should issue commanding the Defendants to deliver vacant possession of the suit land.

2. In their Defence and Counter-claim, the Defendants averred that the Plaintiffs do not have a cause of action as against them; that they purchased the suit property from Mbuthu Kilonzo who was the initial proprietor and that they have substantially developed the land.

3. It is the Defendants' case that in the year 2007, the Plaintiffs fraudulently had the suit property registered in their favour and that the register in respect to the suit property should be rectified.

The Plaintiffs' case

4. The 1st Plaintiff, PW1, informed the court that he is the registered proprietor of land known as parcel number 1758 Ukia/Mukuyuni/1758; that he bought the suit property in 1992 from Mbuthu Kilonzo and Masilia Kilonzo and that he had previously bought another piece of land from their father.

5. It was the evidence of PW1 that after the two brothers sold the suit land to him, they moved to Kathuzweni; that when he bought the land, it was still under adjudication and that the said land was still under the name of the sellers' mother.

6. PW1 informed the court that after the said purchase, he travelled out of the country and when he returned in the year 2001, he found the Defendants had invaded the suit land.

7. PW1 produced in evidence the title document in respect to the suit property.

8. In cross-examination by the 2nd Defendant, the Plaintiff stated that Mbuthu could not have sold to him (*the 2nd Defendant*) the land; that Mbuthu had no authority to sell the suit property because it was owned by two brothers and that there is a boundary between his land and the land owned by Joyce.

The Defendant's case

9. The 2nd Defendant, (DW1), informed the court that he used to live at a shopping centre; that he was approached by one Muasya Mbiti who was selling the suit property and that he paid to a Mr. Mbuthu the purchase price.

10. According to the evidence of DW1, Mr. Muasya, who is the 1st Defendant, died and was buried on the suit property.

11. It was the evidence of DW1 that although he purchased the suit property from Mbuthu Kilonzo, he found a Mr. Mangeli on the land; that the two brothers had divided the suit property amongst themselves and that one of the brothers sold his share to Joyce.

12. According to the 2nd Defendant, the 1st Plaintiff purchased the area that Mbuthu was occupying but later on claimed the whole land.

13. In cross-examination, DW1 stated that he purchased the land in the year 2001; that Mbuthu did not "give" him the number of the portion of land that he purchased and that the land had not been formally sub-divided. None of the parties submitted.

14. The Plaintiff's claim is that having purchased the suit property from the people who were adjudicated as the owners of the suit land, he was issued with a Title Deed.

15. The 1st Plaintiff produced a Title Deed which was issued in his favour on 12th August, 2008 pursuant to the provisions of the Registered Land Act (*repealed*).

16. Section 27 of the Registered Land Act (*repealed*) provides that the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.

17. Section 143 of the same Act provides that the court may order for the rectification of the register by directing that the register be cancelled or amended where the court is satisfied that any registration (*other than a first registration*) has been obtained by fraud or mistake.

18. Although the Defendants pleaded that the Plaintiffs obtained the Title Deed in respect to the suit property fraudulently, there is no evidence to prove that allegation.

19. In view of the fact that the original owners of the suit property are not complaining about the issuance of the said Title Deed, and in the absence of evidence to show that the Defendants purchased the suit property from the original owners(s), I find and hold that the Plaintiffs have proved their case on a balance of probabilities.

20. On the other hand, the Defendants did not prove their Counter-claim at all.

21. In the circumstances, I allow the Plaintiffs' claim as prayed in the amended Plaint dated 30th November, 2006 and dismiss the Defendants' Counter-claim dated 27th July, 2010 with costs.

DATED AND DELIVERED AT MACHAKOS THIS 3RD DAY OF MARCH, 2017.

OSCAR A. ANGOTE

JUDGE