



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CIVIL CASE NO. 123 OF 2014

STEPHEN MUANGE MUTHEKA, NGONDU NDETO AND

KAVUNGE MWATIKE (*Suing as personal representatives of the*

Estate of MBENGEI NDALA-(deceased)**PLAINTIFFS**

VERSUS

KATELEMBO CO-OPERATIVE SOCIETY**1ST DEFENDANT**

STEPHEN MAITHA MANG'OKA**2ND DEFENDANT**

JUDGMENT

1. In their Complaint dated 3rd October, 2014, the Plaintiffs averred that in the year 1970, the deceased bought shares and a plot from the Athiani Farming and Ranching Co-operative Society Ltd known as Plot No. 551; that the deceased was member number 77 and that later on, Athiani Farming and Ranching Co-operative Society sold its shares to the 1st Defendant.
2. The Plaintiffs averred that by the time Mbengei Ndala died, the titles within the Ranch had not been processed; that they sold the plot to one Justus Itumu; that the 1st Defendant has proceeded and transferred the suit property to the 2nd Defendant and a 3rd party and that the suit property belongs to Justus Itumu having purchased it from the deceased's family.
3. Although the Defendants were served with Summons to Enter Appearance and the Complaint, they neither entered appearance nor filed their Defences. The Matter proceeded for hearing in the absence of the Defendants.
4. The 1st Plaintiff, PW1, informed the court that he is one of the proposed administrators of the Estate of the late Mbengei Ndala; that Mr. Ndala bought shares and a plot from Athiani Farming and Ranching Co-operative Society, the predecessor of the 1st Defendant and that prior to his death, he had not processed the title deed in respect of plot number 551.
5. According to the 1st Plaintiff, the family of the deceased agreed to sell the plot that had been purchased by the deceased to Justus Itumu.
6. PW1 informed the court that it came as a surprise to them when they learned that the 1st Defendant had sold the suit property to the 2nd Defendant; that parcel of land known as Athi River/Athi River Block 1/1124 as what was formally Plot No. 551 and that the title should be revoked.

7. PW1 produced in evidence the copies of the receipts that were issued to the deceased by Athiani Farming and Ranching Co-operative Society Ltd dated December, 1970 and 26th November, 1970.
8. PW1 also produced a copy of the Title Deed showing that parcel of land known as Athi River/Athi River Block 1/1124 was issued to the 2nd Defendant on 28th March, 2013.
9. The Plaintiff's advocate filed his submissions and authorities which I have considered.
10. The Plaintiff's evidence was not controverted by the Defendants.
11. Considering there is no evidence rebutting the Plaintiffs' assertion that parcel of land known as Athi River/Athi River Block 1/1124 is what used to be plot 551; and that plot 551 was owned by the deceased, I find that the Plaintiff has established his case on a balance of probabilities.
12. In the absence of evidence from the Defendants to show how they were registered as the proprietors of the suit land, I find and hold that parcel of land known as Athi River/Athi river Block 1/1124 was registered in favour of the 2nd Defendant either fraudulently or by mistake.
13. For those reasons, I allow the Plaintiffs' Complaint dated 3rd October, 2014 in the following terms:

(a) A declaration be and is hereby issued that all that parcel of land known as Athi River/Athi River Block 1/1124 belongs to the Estate of Mbengei Ndala and should be registered as such.

(b) An order for rectification of the register by cancelling the Title Deed that was issued to Stephen Maitha Mang'oka be and is hereby issued.

(c) The Defendants to pay the costs of the suit.

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

OSCAR A. ANGOTE

JUDGE