



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC NO. 108 OF 2007**

**MICHAEL MUEMA KANYUMU ..... PLAINTIFF/APPLICANT**

**VERSUS**

**1. NTHENYA MUTUA .....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**2. KIOKO MUTUA.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**3. MUOKI MUTUA .....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**4. ITAMBO MUTUA.....4<sup>TH</sup> DEFENDANT/RESPONDENT**

**5. KING'OO MUTUA.....5<sup>TH</sup> DEFENDANT/RESPONDENT**

**JUDGMENT**

1. **Michael Muema Kinyumu** who is the plaintiff herein is a resident of **Nairobi** and has a home in **Mbooni**. He also owns land parcel number **Mbooni /iiani/251** which he purchased from one Rebecca in the year **2003**. He has sued the defendants who are still in occupation of the said **Mbooni/iiani/251**.

2. By his plaint dated the **26<sup>th</sup> November, 2007** and filed in court on even date, the plaintiff prays for judgment against the defendants for:-

**a) A declaration that the plaintiff is the lawful and bonafide owner and entitled to occupation and possession of Plot No.MBOONI/IIANI/251**

**b) A perpetual injunction restraining the Defendant either by themselves, their agents, employees, servants and/or otherwise whosoever from entering ,occupying, trespassing, constructing, erecting, building structure and /or in any other way interfering with the Plaintiff's Plot No. MBOONI/IIANI/251.**

**c) Costs and interest of this suit.**

**d) Any other and/or other relief that this Honourable Court deems fit and expedient to grant in the aid of justice.**

3. The claim is denied by the Defendants in their joint statement of defence dated **04/12/2007** and filed in court on even date.

4. The plaintiff's evidence in chief was that he purchased land parcel number **Mbooni/iiani/251** from one **Rebecca** in the year **2003**. He went on to say that he paid **Rebecca** the purchase price which the two had agreed upon in the presence of the Defendants and that he was thereafter issued with a title deed for the land in question in the year **2007** (see *Pex. no 1*) He produced a copy of search and a receipt issued to him to show the land belongs to him as *Pex no. 2(a)* and *(b)* respectively. The plaintiff went on to say that the Defendants have barred him from developing the land in question since the year **2003**. He added that the Defendants have cultivated on the land and at times, they erect structures on it.

5. His evidence in cross-examination by the second Defendant was that the Defendants only served him with an objection to the sale of land after he had purchased it. He said that the only building that he saw in the land as he purchased it belonged to the seller, an issue he reiterated in his evidence in re-examination.

6. Only the second defendant testified in court. The other Defendants did not show up in court for hearing. His evidence was that land parcel number **Mbooni/iiani/251** is registered in the name of **Rebecca Mutio Kioko**. He went on to say that it is their only ancestral land that remains after the rest of the land was sold to other people. He said that he and his co-defendants have lived on the said land for close to **40 years** and have made enormous development on it. He said that in the year **2005**, he noticed land sale agreement between his grandmother, his parents and the plaintiff. He termed the sale agreement as a conspiracy and that he and his co-defendants were aggrieved by the intended sale as a result of which they lodged complaint to their clan head and at the Land Control Board. He pointed out that in their complaint, they sought to be given the first priority to purchase the land and asked the court to disallow the sale as it required to have their consent.

7. His evidence in cross-examination by **Mr. Mutune** for the plaintiff was that **Rebecca Mutio Kioko** is the registered owner of the suit land but admitted that he had not produced any documents to prove it. He said that the copy of title deed (*Pex no. 1*) and the copy of official search (*Pex no. 2(a)*) show the plaintiff as the registered owner of the land in question. He agreed that **Rebecca Mutio Kioko's** name does not appear in the two documents. He agreed that **Rebecca** sold the land to the plaintiff and could not tell if she was forced to sell it or not. He admitted that his parents were present when she sold the land in question. He agreed that he had not produced any documents to show that he and his co-defendants had objected to the sale. He said that the plaintiff has not been to the land since he purchased.

8. None of the parties had filed their submissions by the time of writing this judgment. From the evidence on record, I have no doubt that the plaintiff is the registered owner of land parcel number **Mbooni/iiani/251**. The Defendant himself has conceded as much in his evidence in cross-examination. It also clear that the plaintiff has not been able to make use of his property because the Defendants are in actual possession of it even though the second defendant in his evidence in cross-examination told the court that it is only the **5<sup>th</sup>** Defendant who is residing on the said parcel of land. There is no evidence to show that the Defendants ever objected to the sale agreement between the plaintiff and **Rebecca Mutio Kioko** the former being the purchaser and the latter being the seller of the suit land. Even though the **2<sup>nd</sup>** Defendant in his evidence in chief told the court that he and his co-defendants have lived on the said land for more than **40 years** he did admit in his evidence in cross-examination that his parents were present when one **Rebecca Mutio Kioko** sold the land to the plaintiff. The Defendant in his own evidence told the court portions of the said parcel of land were sold to other buyers and there is no evidence to show that the Defendants ever objected to such sale.

9. Having evaluated the evidence on record and having read the pleadings herein, I am satisfied that the plaintiff has satisfied this court that he has cause of action against the Defendants. In the circumstances, I hereby proceed to enter judgement for the plaintiffs against the Defendants jointly and severally in terms of prayers (a), (b) and (c) of the plaint. It is so ordered.

**Judgment delivered and signed on 25th July, 2017 at Makueni Environment and Land Court .**

**MBOGO C.G**

**JUDGE**

**25/7/2017**

Before Mbogo C.G judge

Mr. Kwemboi - Court Assistant

Mr. Hassan hold brief for Mr.Musyoka Kimeu for plaintiff absent

1<sup>st</sup> Defendant

2<sup>nd</sup> Defendant

3<sup>rd</sup> Defendant Absent

4<sup>th</sup> Defendant

5<sup>th</sup> Defendant

**MBOGO C.G**

**JUDGE**