



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 272 OF 2012**

**ESTHER MUTILE MUTISO .....PLAINTIFF**

**VERSUS**

**ROSE MUENI SCHULTZ .....1<sup>ST</sup> DEFENDANT**

**MACHAKOS DISTRICT LAND REGISTRAR .....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. In the Plaintiff dated 25<sup>th</sup> July, 2012, the Plaintiff has averred that between 1976 and 2003, her deceased husband was the registered proprietor of parcel of land number Mbiuni/Mbuini/257 (*the suit land*); that the land is fully occupied by the Plaintiff and that on 23<sup>rd</sup> June, 2011, she received a demand letter from the Defendant alleging that she had entered the suit land unlawfully.
2. The Plaintiff has averred that when she conducted an official search, she discovered that the suit land had been transferred to the Defendant in the year 2003, six (6) years after the death of her husband.
3. The Plaintiff is seeking for an order cancelling the 1<sup>st</sup> Defendant's title and directing the 2<sup>nd</sup> Defendant to rectify the register to reflect the name of her deceased husband.
4. Although the 1<sup>st</sup> Defendant was served with Summons to Enter Appearance, she neither entered appearance nor filed a Defence.
5. The Plaintiff, PW1, informed the court that her husband was the registered proprietor of the suit land; that she is the administrator of the Estate of her late husband and that she is the one who is occupying the suit land with her family.
6. The Plaintiff produced in evidence the original Certificate of Death of the late Joseph Mutiso Ngui which shows that he died on 13<sup>th</sup> April, 1997.
7. Although her late husband never sold the suit land, PW1, produced in evidence the certified copy of the register showing that the land was transferred to the 1<sup>st</sup> Defendant on 22<sup>nd</sup> December, 2003.
8. The uncontroverted evidence before me shows that the suit land was fraudulently registered in favour of the 1<sup>st</sup> Defendant on 22<sup>nd</sup> December, 2003.
9. In the circumstances, the said transfer to the 1<sup>st</sup> Defendant is null and void.
10. For those reasons, I allow the Plaintiff's Plaintiff dated 25<sup>th</sup> July, 2012 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2017.**

**O. A. ANGOTE**

**JUDGE**