



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 168 OF 2016

DANIEL KIMANTHI MUTISYA

**JOSEPHAT WAITA MUTISYA (SUING ON BEHALF AND BENEFICIARIES OF
 THE ESTATE OF NDUNDA WAITA – DECEASED)PLAINTIFFS**

VERSUS

THE CHAIRMAN.....1ST DEFENDANT

THE SECRETARY2ND DEFENDANT

THE TREASURER3RD DEFENDANT

MWEA FARMERS CO. LIMITED.....4TH DEFENDANT

RULING

1. In the Chamber Summons dated 24th October, 2016, the Plaintiffs are seeking for the following orders:

a. That the body of Ndambuki Kaveke interred on Plot No. 317 be immediately exhumed.

b. That the OCS Masinga Police Station be hereby ordered to supervise the family Of the said Ndambuki Kaveke (deceased) together with the Defendants to exhume the body of the said Ndambuki Kaveke (deceased) from Plot No. 317.

2. According to the Affidavit of the 1st Plaintiff, plot number 317 is registered in the name of Ndunda Waita (deceased); that the Defendants trespassed on the suit land in 1993; that the Defendants forged the receipts to include someone who is unknown to them in the said plot and that the remains of Ndambuki Kaveke who was interred on the suit land should be exhumed.

3. In response, the Secretary of Mwea Farmers Company Limited deponed that the suit land was jointly registered in the name of the deceased and his brother Ndambuki Kaveke; that the company issued receipts in the name of Ndambuki Kaveke and that the Defendant is the original owner of the suit land.

4. The Plaintiff and the Defendants filed their respective submissions which I have considered.

5. In the Plaint dated 24th October, 2016, the Plaintiffs are seeking for an order directing the Defendant to put them in possession of plot number 317.

6. According to the Plaintiffs, the suit land is registered in the names of Ndunda Waita (*deceased*) and that although the Defendant states that it allocated the suit land to one Ndambuki Kaveke (*deceased*), the said person is unknown to them.
7. Although the Plaintiffs have annexed receipts showing that the late Ndunda Waita made payments to the Defendant and was issued with a share certificate dated 20th April, 1982, the said receipts and the share certificate do not indicate the parcel of land that was allocated to Ndunda Waita.
8. In any event, the Defendant has exhibited a share certificate showing a parcel of land measuring 22.5 acres was allocated to Ndunda Waita and Ndambuki Kaveke on 20th April, 1982.
9. It would appear that one of the share certificate being relied upon by the parties is a forgery.
10. Consequently, the issue of who actually owns the suit land will have to be determined at trial before an order of exhumation, if at all, can be made.
11. The Plaintiffs also ought to investigate and find out the legal administrators of the person they want exhumed from the suit land. Until the legal representatives of Ndambuki Kaveke are joined in the suit, the Plaintiffs cannot be granted the orders that they are seeking.
12. For those reasons, I dismiss the Application dated 24th October, 2016 with costs

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 22ND DAY OF SEPTEMBER, 2017.

O.A. ANGOTE

JUDGE