



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 26 OF 2013**

**KALUNZU MAVUTI.....PLAINTIFF**

**VERSUS**

**MUNYOKI MAVUTI.....1<sup>ST</sup> DEFENDANT**

**MUTUKU MUTINDA.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. In his Complaint dated 28<sup>th</sup> February, 2006, the Plaintiff averred that he is the registered proprietor of land Title number Kibauni/Mutembuku/412 (*the suit land*); that in the year 1988, the Defendants trespassed on the suit land and filed a claim with the adjudication department and that their claim was dismissed by the Minister in Appeal Case No. LA/20/96 on 23<sup>rd</sup> November, 2001.
2. The Plaintiff is seeking for a permanent injunction restraining the Defendants from entering, cultivating or dealing in any manner with the suit land.
3. Although the Defendants were served with the Summons to Enter Appearance, they neither entered appearance nor filed a Defence. The matter proceeded for formal proof on 5<sup>th</sup> February, 2015.
4. The Plaintiff, PW1, informed the court that the two Defendants are his step-brothers; that the suit land is registered in his favour and that they entered the land and started cultivating it in the year 1998.
5. It was the evidence of PW1 that the dispute between him and the Defendants was dealt with under the Land Adjudication Act all the way to the Minister and that the dispute was decided in his favour.
6. PW1 stated that the suit land does not belong to the family; that he purchased the land in 1987 and that the Plaintiff should be allowed.
7. The Plaintiff's advocate filed brief submissions and reinstated the evidence by PW1. I have considered those submissions.
8. The Plaintiff produced in evidence the Title Deed for the suit land. According to the said Title Deed, the Plaintiff was registered as the proprietor of the land on 16<sup>th</sup> May, 2003.
9. According to the proceedings before the Minister in Appeal Case No. LA/20/96-Plot No. 412 between the Plaintiff and the Defendants, the Minister directed that the Plaintiff should be registered as the sole proprietor of the suit land.
10. The decision of the Minister is dated 23<sup>rd</sup> November, 2001. It was on the basis of the said decision that the Plaintiff was registered as the proprietor of the land in the year 2003.
11. In view of the fact that the dispute between the Plaintiff and the Defendants was decided by the Minister pursuant to the provisions of the Land Adjudication Act, and considering that the Defendants never appealed against the said decision and a Title Deed was subsequently issued to the Plaintiff, I find and hold that the Plaintiff has proved his case on a balance of probabilities.

12. For those reasons, I allow the Plaintiff's Complaint dated 28<sup>th</sup> February, 2006 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2017.**

**O.A. ANGOTE**

**JUDGE**