



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 127 OF 2004**

**J.G. MUNYAO KASIVA.....PLAINTIFF**

**VERSUS**

**KATELEMBO -ATHIANI MUPUTI FARMING &**

**RANCHING CO-OPERATIVE SOCIETY LTD.....1<sup>ST</sup> DEFENDANT**

**DICKSON NDAMBUKI NDUNDA.....2<sup>ND</sup> DEFENDANT**

**PHILSTA MUMBUA MUSYOK.....3<sup>RD</sup> DEFENDANT**

**RAEL MUTWOTA.....4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. In the amended Plaintiff dated 27<sup>th</sup> November, 2006, the Plaintiff averred that on 8<sup>th</sup> January, 1989, he entered into an agreement with the deceased, Benjamin Mutwota Wambua, who was the son of Philip Wambua and that Philip Wambua was member number 3375 of the 1<sup>st</sup> Defendant.
2. The Plaintiff averred that the deceased sold to him plot number 1898 pursuant to his father's membership for Kshs. 24,500 which amount was paid in installments; that the 1<sup>st</sup> Defendant's records were amended to reflect him as the owner of the land and that the Defendants fraudulently caused the 2<sup>nd</sup> Defendant's name to appear in the register of the 1<sup>st</sup> Defendant as a joined owner of the suit land.
3. The Plaintiff has sought for a declaration that plot number 1898 should be registered in his sole name and for a mandatory injunction to issue directed to the 1<sup>st</sup> Defendant to register him as the owner of the said land. The Plaintiff is also seeking for an order of eviction as against the 2<sup>nd</sup> to the 4<sup>th</sup> Defendants.
4. Although the 1<sup>st</sup> Defendant was served with the Affidavit of Service, he neither entered appearance nor filed a Defence.
5. The 2<sup>nd</sup> Defendant filed a Defence in which he averred that the transfer of the suit land to him was properly done because he acquired the land for valuable consideration.
6. The 3<sup>rd</sup> Defendant filed a Defence in which he generally denied the Plaintiff's averments.
7. When the matter came up for hearing on 22<sup>nd</sup> May, 2017, only the Plaintiff was in attendance.

8. The Plaintiff, PW1, informed the court that he purchased plot number 1898 from Benjamin Mutwota Wambua; that Benjamin was the living son of the late Philip Wambua who was a member of the 1<sup>st</sup> Defendant and who had been allocated the suit land and that he paid the full purchase price for the land.

9. It was the evidence of PW1 that when he went to collect the Title Deed, he was surprised to find that the 2<sup>nd</sup> Defendant was indicated as a co-owner of the suit land and that the 2<sup>nd</sup> Defendant later on transferred the land to the 3<sup>rd</sup> Defendant.

10. The Plaintiff produced in evidence the agreement that he entered into with the late Benjamin Mutwota Wambua dated 8<sup>th</sup> January, 1989 and the documents evidencing the payment of the purchase price.

11. The Plaintiff's advocate filed brief submissions in which he submitted that the Plaintiff gave uncontroverted evidence of how he bought the suit land.

12. I have considered the evidence by the Plaintiff and in particular the Sale Agreement of 8<sup>th</sup> January, 1989 between the Plaintiff and the late Benjamin Mutwota, the son of Philip Wambua, who was the owner of plot number 1898.

13. Indeed, the Defendants have not controverted the said Sale Agreement.

14. In view of the said Sale Agreement and the letter of 15<sup>th</sup> October, 1990 in which Benjamin Wambua and the entire family agreed to transfer the suit land to the Plaintiff, I am satisfied that the Plaintiff has proved his case on a balance of probabilities. I therefore allow the amended Plaint as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23<sup>RD</sup> DAY OF NOVEMBER, 2017.**

**O. A. ANGOTE**

**JUDGE**