



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 116 OF 2009**

**THE CHURCH OF JESUS CHRIST OF LATTER-DAY**

**SAINTS- KENYA REGISTERED TRUSTEES.....PLAINTIFF**

**VERSUS**

**FRANCIS NZIOKA NTHENGE .....1<sup>ST</sup> DEFENDANT**

**NDANGAU MULI .....2<sup>ND</sup> DEFENDANT**

**HANNA KARANJA .....3<sup>RD</sup> DEFENDANT**

**SIMON KINYUA .....4<sup>TH</sup> DEFENDANT**

**ANNE MBURU .....5<sup>TH</sup> DEFENDANT**

**MUTUA KINUTHIA .....6<sup>TH</sup> DEFENDANT**

**JOHN KITONYI NZIOKA .....7<sup>TH</sup> DEFENDANT**

**PATRICIA MUMBUA NGULI .....8<sup>TH</sup> DEFENDANT**

**NGUTA NDETI .....9<sup>TH</sup> DEFENDANT**

**MUTHOKA KITABI .....10<sup>TH</sup> DEFENDANT**

**MUTISO MUTYAUVYU .....11<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. In the Plaint dated 20<sup>th</sup> April, 2009, the Plaintiff has averred that it is the registered owner of a property known as L.R. No. 337/1632 situate in Mavoko Township of Machakos County; that the Plaintiff purchased the suit land from Trupki Limited in August, 2005 and that the said suit land was transferred in favour of the Plaintiff in March, 2006.

2. The Plaintiff has averred that when it attempted to erect a boundary wall around the suit land, its efforts were unsuccessful because of the disruptions by the Defendants who were claiming that they own the suit land.

3. The Plaintiff is seeking for a declaration that it is the registered proprietor of the suit property and for an order of eviction to issue in respect of the Defendants.

4. The Defendants filed a Defence and a Counter-claim in which they averred that the Plaintiff acquired the title document for the suit land illegally and unlawfully.

5. It is the Defendants' case that before the year 2005, they had been in open, continuous and uninterrupted use and occupation of the suit land for over thirty (30) years thereby acquiring rights by prescription.

6. According to the Defence, the Defendants have become entitled to the suit land by adverse possession, prescription, first occupation and or ancestral rights and should be declared as such.

**The Plaintiff's case:**

7. The Plaintiff's Secretary and Trustee, PW1, informed the court that the Plaintiff is the registered proprietor of L.R. No. 337/6132 (*the suit property*) having purchased it for the purpose of putting up a church building.

8. According to PW1, after purchasing the land from Trupki Limited in August, 2005, they obtained the approval from the then Municipal Council of Mavoko to construct a perimeter wall.

9. However, when they attempted to put up a wall around the suit land in the year 2007, a group of people who claimed that they owned the land emerged.

10. PW1 informed the court that the Plaintiff was not aware of the Defendants' claim at the time it was purchasing the suit land.

11. PW1 denied that the Defendants have been in exclusive, continuous, uninterrupted and notorious occupation of the suit land for twelve (12) years or at all. It was the evidence of PW1 that the Defendants only started claiming the land in the year 2007 and that the Defendants' Counter-claim should be dismissed.

12. PW1 produced in evidence the Agreement of Sale of 23<sup>rd</sup> August, 2005, the registered Transfer dated 22<sup>nd</sup> February, 2006, the Grant No. IR 62450 and the Rent Clearance Certificate dated 10<sup>th</sup> January, 2006.

13. The Defendants did not testify in this matter although their advocate was served with a hearing notice.

14. The Plaintiff's advocate filed detailed written submissions and authorities which I have considered.

15. It is not in dispute that the Plaintiff is the registered proprietor of Land Reference number 337/1632 Mavoko Township, Athi River.

16. PW1 produced in evidence the Sale Agreement dated 23<sup>rd</sup> August, 2005 which shows that the Plaintiff purchased the suit land from Trupki Limited for Kshs. 11,007,500. The suit land was then registered in favour of the Plaintiff on 9<sup>th</sup> March, 2006.

17. Although the Defendants alleged in their Defence that they are entitled to the suit land either by way of adverse possession or as being the first ones in occupation of the land, no evidence was called to show that indeed by the time the Plaintiff was purchasing the suit land, the Defendants had occupied the suit land continuously, exclusively and openly for a period of twelve (12) years.

18. In the absence of evidence to show the Defendants' entitlement to the suit land, and in view of the fact that the Plaintiff is in possession of a grant which has not been impugned, I find that the Plaintiff has

proved its case on a balance of probabilities.

19. For those reasons, I allow the Plaintiff's Complaint dated 20<sup>th</sup> April, 2009 as follows:

*a. A declaration be and is hereby issued that the Plaintiff is the registered owner of land known as L.R. No. 337/1632 situate in Machakos County.*

*b. The Defendant to give vacant possession of L.R. No. 337/1632.*

*c. An order of eviction be and is hereby issued in respect of the Defendants, their employees, tenants, agents and/or assigns and that this order be enforced by the OCS, Athi River Police Station.*

*d. The Defendants to pay the costs of the suit.*

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 9<sup>TH</sup> DAY OF NOVEMBER, 2017.**

**O.A. ANGOTE**

**JUDGE**