



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 44 OF 2012**

**FREDRICK NZIOKA MUSAU.....PLAINTIFF**

**VERSUS**

**WILLY MUTIE.....1<sup>ST</sup> DEFENDANT**

**DRUMVALE FARMERS CO-OPERATIVE SOCIETY**

**LTD (IN LIQUIDATION).....2<sup>ND</sup> DEFENDANT**

**THE DISTRICT LAND REGISTRAR MACHAKOS.....3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. In the Plaintiff dated 20<sup>th</sup> February, 2012, the Plaintiff averred that Samson Musau, the deceased, was a registered member of the 2<sup>nd</sup> Defendant; that the deceased was allocated a parcel of land known as Mavoko Town Block 12/83 by the 2<sup>nd</sup> Defendant in 1989 and that in the year 2000, the Defendants fraudulently registered the suit land in favour of the 1<sup>st</sup> Defendant.
2. It is the Plaintiff's case that it was not until 7<sup>th</sup> September, 2011 that he discovered that the suit land had been fraudulently registered in favour of the 1<sup>st</sup> Defendant.
3. The Plaintiff is seeking for a declaration that the deceased is the *bona fide* owner of the suit land and an order directing that the registration of the 1<sup>st</sup> Defendant as the proprietor of the suit land was obtained by fraud.
4. In its Defence, the 2<sup>nd</sup> Defendant admitted that it indeed allocated the deceased the suit land.
5. On his part, the 1<sup>st</sup> Defendant averred that it acquired the suit land legally and without any fraud, mistake or wrongdoing.
6. The matter proceeded for hearing on 16<sup>th</sup> May, 2017 when only the Plaintiff testified. The Defendants did not adduce any evidence.
7. The Plaintiff, PW1, informed the court that he is the personal representative of the Estate of the deceased who died on 22<sup>nd</sup> June, 1989; that the deceased was a member of the 2<sup>nd</sup> Defendant and that he was allocated the suit land by the 2<sup>nd</sup> Defendant in 1989.

8. However, it was the evidence of PW1 that during the collection of the assets of the deceased, they discovered that the suit land had been fraudulently registered in the name of the 1<sup>st</sup> Defendant.

9. It was the evidence of PW1 that his family has always used the land and that indeed his son has his house on the suit land.

10. The Plaintiff produced in evidence the certificate from the 2<sup>nd</sup> Defendant showing that the deceased was registered as member 1047 with the 2<sup>nd</sup> Defendant on 17<sup>th</sup> June, 1978.

11. The Defendants did not adduce any evidence.

12. The Plaintiff's advocate filed brief submissions which I have considered.

13. The evidence before me shows that the deceased was registered as member number 1047 in the 2<sup>nd</sup> Defendant's organization on 17<sup>th</sup> June, 1978.

14. The 2<sup>nd</sup> Defendant has admitted in its Defence that by virtue of his membership, the deceased was allocated the suit land.

15. The 1<sup>st</sup> Defendant did not adduce any evidence to show how he was registered as the proprietor of parcel of land known as Mavoko Town Block 12/83.

16. Considering that the suit property was initially owned by the 2<sup>nd</sup> Defendant, who has admitted that it allocated it to the deceased and not the 1<sup>st</sup> Defendant, I find that the suit land was registered in favour of the 1<sup>st</sup> Defendant fraudulently.

17. For those reasons, I find that the Plaintiff has proved his case on a balance of probabilities.

18. I therefore allow the Plaintiff's claim dated 20<sup>th</sup> February, 2012 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 2<sup>ND</sup> DAY OF NOVEMBER, 2017.**

**O. A. ANGOTE**

**JUDGE**