



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MAKUENI
ELC NO 126 OF 2017
FORMERLY MACHAKOS CIVIL SUIT NO . 115 OF 2012

NICHOLAS MAWIA MBALUKA.....PLAINTIFF/APPLICANT

VERSUS

MICHAEL NTHEI ALIAS KINDEVU.....1ST DEFENDANT/RESPONDENTS

THE LAND ADJUDICATION AND SETTLEMENT OFFICER

(MTITO ANDEI DIVISION.....2ND DEFENDANT/RESPONDENT

THE DIRECTOR, LAND ADJUDICATION SETTLEMENT

DEPARTMENT.....3RD DEFENDANT/RESPONDENT

JUDGMENT

1. By his plaint dated **12th April, 2012** and filed in court on the **13th April, 2012** the plaintiff prays for judgement against the defendants jointly and severally for:-

a. A declaration that plot No. 710 measures 7.97 hectares and not 1.02 hectares belongs to the Plaintiff.

b. An order compelling the correction of the anomalies of measurements of Plot No. 710 by the 2nd Defendant in the Map and on the ground so that defendant's letter of allotment is changed to read 1.02 Hectares and the Plaintiff's letter of allotment changed to read 7.97 Hectares and the map redraw to reflect the true position on the ground.

c. An order compelling the 3rd Defendant to direct the 2nd defendant herein to correct the anomalies of measurements on the Map to reflect the measurements on the ground of plot No. 710.

d. An order compelling the 1st Defendant sign or execute all the necessary documents in the correction and rectification process of the above said measurement anomalies and in default the Deputy Registrar of this Court to do so.

e. An order of injunction restraining the 1st Defendant from further trespassing to the Plaintiff's portion of land.

f. Costs of the suit.

g. Any other relief this Honourable Court deems fit and just to grant.

2. The defendants did not enter appearance nor did they file defence within the prescribed period after being served with summons. For the record, the 1st and 2nd defendants were served with summons on the 27th June, 2013 while the 3rd defendant was served on the 4th June, 2013 as evidenced by the two affidavits of service which is dated 8th August, 2013. As such this matter proceeded to formal proof on the 2nd November, 2017. His evidence was that he owns plot number 710 in **Kathekani Settlement Scheme** and that demarcation of the plot was done in his name. He said that the size of the plot is **7.97 hectares**. He went on to say that when he got the letter of allotment dated 28th October, 2005 (*DEX No. PEX NO.1*), the same showed the size of the land was **5.48 hectares**. It was also his evidence that he came to learn that adjudication officers were taken to ground by the first defendant using the same documentation as his as result of which the first defendant was allocated the same **plot number 710 (DEX NO 2)**. The plaintiff added that he saw the area chief who directed him to the area district officer. He said that he later got another letter (*PEX NO.3*) which allocated him a different plot whose number was **709** measuring **3.51 hectares**. That he complained to a lands officer by the name of **Mr. Njagi** about it. He pointed out that he received a letter from the lands office **Mtito** dated 2nd February, 2011 (*PEXNO.4*) to acknowledge that his complaint was genuine. According to him, he and the first defendant were advised to maintain the boundaries and at the same time they were advised to seek remedies in court (*see PEX NO. 5*). He went on to say that he received another letter from the same office dated 2nd November, 2011 (*PEX NO. 6*) to notify him not to expect to get consent from them. He pointed out that he also got another letter (*PEX NO. 7*) from the Divisional Lands Officer advising him that officers would visit the ground. He added that when the officers visited, they told him that his land should measure **7.97 hectares** as it appears on the ground. He went on to say that the same officers said that plot **number 709** should measure **1.02 hectares** on the ground even though it showed **3.51 hectares** on the map. It was his evidence that the officers gave him a certified demarcation map (*PEX NO. 8*) and that when he was called to pick a new allotment letter dated 11th January, 2011 (*PEX NO. 9*), It showed the acreage of **plot number 709** as **3.51 hectares** as a result of which he his lawyer wrote a demand letter to the first defendant on the 18th November, 2011 (*PEX NO. 10*) since his plot was **710** measuring **7.97 hectares**. He went on to say that he wrote another letter (*PEX NO. 11*) to the Director of Land Adjudication and Settlement to complain over parcels **numbers 709 and 710**. The plaintiff further said that on the 28th October, 2011 he wrote another letter (*PEX NO. 12*) to demand the demarcation map be amended but instead he received a gazette notice dated 20th June, 2014 from the National land Commission that the first defendant as the owner of plot **number 710** measuring **1.965 hectares** while his was **709** measuring **0.10 hectares**. His prayers therefore are to have this court to enter judgement in his favour.

3. The plaintiff's counsel had not filed his submissions by the time of writing this judgement. Nevertheless I am satisfied that the plaintiff has adduced uncontroverted evidence and I see no reason why judgement cannot be entered for him and against the defendants.

4. From the two allotment letters (*see PEX NO. 1 and 2 respectively*) issued to the plaintiff and the first defendant, it is clear that each one of them was allocated plot **number 710** whose size was **5.48 hectares**. The second and the third defendants ought to have addressed the plaintiff's complaint appropriately in line with their letters dated 2nd February, 2011 (*PEX NO. 5*), 2nd November, 2011 (*PEX No. 6*), 12th October, 2011 (*PEX NO. 6*) and 12th October, 2011 (*PEX NO 7*). The plaintiff had legitimate expectation to be allocated **plot number 710** whose measurement was **7.97 hectares**. In the circumstances, I hereby proceed to enter judgement for the plaintiff and against the defendants jointly and severally as hereunder:-

a. A declaration that plot No. 710 measures 7.97 hectares and not 1.02 hectares belongs to the Plaintiff.

b. An order compelling the correction of the anomalies of measurements of Plot No. 710 by the 2nd Defendant in the Map and on the ground so that defendant's letter of allotment is changed to read 1.02 Hectares and the Plaintiff's letter of allotment changed to read 7.97 Hectares and the map redraw to reflect the true position on the ground.

c. An order compelling the 3rd Defendant to direct the 2nd defendant herein to correct the anomalies of measurements on the Map to reflect the measurements on the ground of plot No. 710.

d. An order compelling the 1st Defendant sign or execute all the necessary documents in the correction and rectification process of the above said measurement anomalies and in default the Deputy Registrar of this Court to do so.

e. An order of injunction restraining the 1st Defendant from further trespassing to the Plaintiff's portion of land.

f. Costs of the suit.

g. Any other relief this Honourable Court deems fit and just to grant.

It is so ordered.

Signed, Dated and Delivered this 5th day of December, 2017

MBOGO C.G

JUDGE

Mr. Kwemboi Court Assistant

Mr. Manthi, Masika for plaintiff Absent

Plaintiff called absent

MBOGO C.G

JUDGE