



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 37 OF 2012

SIMON KALELE NGUKU.....PLAINTIFF

VERUS

PETER MAINA NDEGWA &

FAITH NYAMBURA MUIRURI.....1ST DEFENDANT

MUNICIPAL COUNCIL OF MAVOKO.....2ND DEFENDANT

COMMISSIONER OF LANDS.....3RD DEFENDANT

JUDGMENT

1. In the amended Plaint dated 10th June, 2014, the Plaintiff has averred that he is the legal owner of a piece of land known as L.R. NO. 12715/371 Syokimau; that he purchased shares in a company known as Syokimau Farm Limited and was issued with a share certificate and an allotment letter for plot number 471 and that the said plot was later on exchanged with Plot No. 371.
2. The Plaintiff has further averred that subsequently, Syokimau Farm Limited did execute in his favour a transfer for plot number 371 which is the suit land and was issued with a title document.
3. It is the Plaintiff's case that he later discovered that the 2nd Defendant did not have records of the suit land in his name; that he discovered that the outstanding land rates were in the names of the 1st Defendant and that he is the rightful owner of the suit land.
4. The 2nd Defendant filed its Defence in which it averred that according to its records, the lawful owner of the suit land is the 1st Defendant.
5. The 3rd Defendant on the other hand filed a Defence in which it denied the averments in the Plaint generally.
6. The 1st Defendant did not file a Defence.
7. The Plaintiff, PW1, informed the court that he bought ten (10) shares in Syokimau Farm Limited in the year 1981; that he was then allocated Plot No. 371 and that the Ministry of Lands later on issued him with a grant for L.R. No. 12715/371 which he produced in evidence.
8. The Plaintiff also produced in evidence the Transfer document in respect of L.R. No. 12715/371.

According to the said document, Syokimau Farm Limited transferred to the Plaintiff the suit land on 8th April, 2001. The transfer document was registered on 17th April, 2002.

9. Although the Plaintiff is in possession of the title documents, the property statement of the then Municipal Council of Mavoko shows that the rateable owners of the suit land are Peter Maina Ndegwa and Faith Nyambura Muiruri, the 1st Defendants.

10. Considering that the 1st Defendant did not file a Defence in this matter, and in view of the provisions of Section 26 of the Land Registration Act which provides that the Certificate of Title issued by the Registrar shall be taken by all courts as *prima facie* evidence that the person named as proprietor of the land is the absolute and indefeasible owner, I find that the Plaintiff has proved his case on a balance of probabilities.

11. For those reasons, I allow the Plaintiff's Amended Plaint dated 10th June, 2014 as follows:

a. A declaration be and is hereby issued that the Plaintiff is the legal owner of land known as L.R. No. 12715/371 Syokimau.

b. A permanent injunction be and is hereby issued restraining the Defendants from interfering with the suit land in any manner whatsoever.

c. An order be and is hereby issued directing the 2nd Defendant to rectify its register to show that the suit property belongs to the Plaintiff.

d. The 1st Defendant to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 30TH DAY OF JUNE, 2017.

O.A. ANGOTE

JUDGE