



Kisoso v Wish Life Investment Limited & another; Lucy Wangari Akweyu & another (the Administrators of the Estate of Purity – Wanjiru Mwangi - Deceased) (Interested Party) (Environment & Land Case 241 of 2017) [2023] KEELC 16539 (KLR) (27 March 2023) (Judgment)

Neutral citation: [2023] KEELC 16539 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 241 OF 2017**

MN GICHERU, J

MARCH 27, 2023

BETWEEN

JULIUS MATERIAN KISOSO PLAINTIFF

AND

WISH LIFE INVESTMENT LIMITED 1ST DEFENDANT

THE COUNTY LAND REGISTRAR, KAJIADO 2ND DEFENDANT

AND

LUCY WANGARI AKWEYU & IBRAHIM MWANGI (THE ADMINISTRATORS OF THE ESTATE OF PURITY – WANJIRU MWANGI - DECEASED) INTERESTED PARTY

JUDGMENT

1. The plaintiff's claim against the defendants is as follows.
 - a. A declaration that the plaintiff is the lawful and legal owner of LR Kajiado/Kitengela/5477, suit land.
 - b. An order of permanent injunction restraining the first defendant, its agents and/or servants from disposing off, transferring or in any other way interfering with the suit land.
 - c. An order of permanent injunction restraining the second defendant or its assigns from alienating, cancelling or otherwise interfering with the plaintiff's title deed for the suit land.
 - d. An order directed to the second defendant for cancellation and dispensation of the first defendant's title for the suit land and rectification of the register.



- e. Costs of the suit and interest at court rates.
2. The plaintiff's case is as follows. He was originally the registered owner of LR Kajiado/Kitengela/4076. On July 8, 1994, he caused the land to be subdivided into two parcels namely Kajiado/Kitengela/5476 and 5477. The suit land remained in the plaintiff's name.
3. In September 2015, the plaintiff discovered that he had lost/misplaced the title deed to the suit land. He made a report to the Land Registrar Kajiado and found that the title abstract was also missing from the Land Registry. He was referred to the Directorate of Criminal Investigations. Eventually, he was issued with a replacement of the lost title deed in January, 2016 after the due process for issue was followed.
4. In March, 2016, the plaintiff discovered that the defendants had colluded and fraudulently registered the first defendant as the owner of the suit land and it had been issued with a title deed.
5. In support of his case, the plaintiff filed the following evidence.
 - i. Witness statements by the plaintiff, Paul Lainan Nkina and Andrew Parkeenka Kisoso.
 - ii. Copy of title deed for the suit land issued on January 14, 2016 to the plaintiff.
 - iii. Copy of official search certificate of the suit land dated January 14, 2016.
 - iv. Copy of register for LR 4076 certified as true copy of original on September 23, 2015.
 - v. Copy of the police abstract dated September 23, 2015.
 - vi. Copy of letter by Land Registrar dated September 23, 2015.
 - vii. Copy of report by DCIO Kajiado dated October 5, 2015.
 - viii. Gazette Notice No. 8139 dated October 30, 2015.
 - ix. Copy of newspaper advert in the Daily Nation dated October 16, 2015.
 - x. Copy of letter by Land Registrar dated March 3, 2016.
 - xi. Copy of title deed for the suit land in the name of first defendant dated July 8, 1994.
 - xii. Reconstructed copy of title abstract for the suit land in the name of the first defendant.
 - xiii. Copy of receipt dated October 27, 2015.
 - xiv. Copy of receipt dated 12/1/2016.
 - xv. Copy of letter from District Surveyor dated October 27, 2015.
 - xvi. Copy of mutation form for LR 4076.
6. The first defendant in a defence and counterclaim dated 23/1/2018 denied the claim by the plaintiff. Its case is that it is the registered owner of the suit land after having purchased it from the plaintiff himself. The plaintiff has now illegally, unlawfully, unprocedurally and through a corrupt scheme with officers or employees of the second defendant procured the re-issuance of a second title deed in his name. The first defendant prays for the following orders against the plaintiff in the counterclaim.
 - a. A declaration that the first defendant is the rightful, lawful and legal owner of the suit land.
 - b. An eviction order against the plaintiff from continued trespass on the suit land.



- c. An order of permanent injunction against the plaintiff restraining him, his agents and servants from trespassing, disposing off or interfering with in any way with the suit land.
 - d. An order of cancellation of the second title deed issued to the plaintiff, and dispensation of the plaintiff's title and rectification of the register.
 - e. Costs of the suit and interest at court rates.
7. In support of its case, the first defendant filed the following evidence.
- i. Witness statement by Maureen Waitherero Mwangi.
 - ii. Notice to return title deed dated 9/6/2016.
 - iii. Copy of title deed for the suit land in the name of the first defendant dated July 8, 1994.
 - iv. Copy of CR 12 dated 14/12/2017 for the first defendant.
 - v. Copy of photograph showing the suit land as undeveloped.
 - vi. Copy of certificate of confirmation of grant dated 28/5/2012.
 - vii. Copy of CR 12 dated 26/4/2002.
 - viii. Copy of order dated 12/5/2005 in HCC 1345/2003.
 - ix. Copy of application for caution dated 16/1/2015
 - x. Copies of certificate of official search dated September 2, 2009, August 28, 2012 and January 28, 2015.
 - xi. Copy of letter dated October 23, 2019 addressed to Leone Giuseppe and Dominico Monelli.
 - xii. Copy of receipt to prove postage.
8. The second defendant filed a written statement of defence dated 20/3/2017 in which it is averred that the plaintiff sold the suit land to the first defendant for a consideration of Kshs. 1, 625, 000/-. Secondly, it is averred that the plaintiff misrepresented to the second defendant that he had lost his title deed to the suit property while this was not the case. The second defendant, while relying on this misrepresentation by the plaintiff and a report by the Criminal Investigations Department followed the legal steps in reissuing a new title deed to the plaintiff.
- Finally, the plaintiff lied to the second defendant that the title deed was lost when in fact, he had lawfully transferred the land to the first defendant. He calls for the dismissal of the plaintiff's case with costs.
9. In support of its case, the second defendant filed the following evidence.
- i. Witness statement by David Nyambaso Nyandoro.
 - ii. Copy of extract of prevention book for July 8, 1994.
 - iii. Copy of letter to CCIO Kajiado dated September 23, 2015.
 - iv. Copy of report by the CCIO Kajiado dated October 5, 2015.
 - v. Copy of extract of Standard Newspaper dated October 16, 2015.
 - vi. Copy of extract of Daily Nation Newspaper dated October 5, 2015.
 - vii. Copy of extract of Kenya Gazette No 8139 dated October 30, 2015



- viii. Copy of letter of indemnity dated October 27, 2015.
 - ix. Copy of statutory declaration dated October 27, 2015.
 - x. Copy of green card for the suit land opened on January 14, 2016.
 - xi. Copy of title deed for the suit land dated January 14, 2016 in the name of the plaintiff.
 - xii. Copy of title deed for the suit land dated July 8, 1994 in the name of the first defendant.
 - xiii. A copy of the reconstructed green card opened on July 8, 1994.
 - xiv. A copy of letter dated May 19, 2016.
 - xv. Copy of certificate of official search dated September 2, 2009.
10. The interested parties Lucy Wangari Akmeyu and Ibrahim Mwangi joined the suit in their own right but later supported the case for the defence.
 11. At the trial, the plaintiff testified and called his two witnesses Paul Lainan and Andrew Parkeenka. He also produced his documents as exhibits.
 12. On the part of the defendants, three witnesses testified. They included Lucy Wangari, Maureen Waitherero and David Nyambaso Nyandoro. They produced their documents as exhibits.
 13. Counsel for the parties filed written submissions on February 2, 2022, March 17, 2022 and April 7, 2022 respectively. They identified the following issues for determination.
 - i. Who is the rightful owner of the suit land?
 - ii. Whether or not the title deed for the first defendant was fraudulently and unprocedurally issued?
 - iii. Whether or not the title deed for the plaintiff was issued through the due process as provided for in law?
 - iv. Whether or not the first defendant's defence and counterclaim was filed by an unauthorized person and if so, whether it should be struck out?
 - v. What happens when there are two conflicting titles?
 14. I have carefully considered the evidence adduced by all the parties including the witness statements, documents, evidence at the trial, the submissions and the case law cited therein. I agree with the learned counsel for the parties that the issues as identified will determine the dispute. I make the following findings on the issues raised.
 15. On the issue of whether the defendants' defense and counterclaim were filed by an unauthorized person and if it should be struck out, I find that Maureen Waitherero being the majority shareholder of the first defendant was the right person to swear the verifying affidavit. According to her evidence, she had the authority of the only other shareholder who is the daughter of Leone Giuseppe. There is no evidence to the contrary. The authority of *Nairobi Veterinary Centre Limited v Asia Pharmaceuticals* HCCC 391 OF 200 also held that the majority of the members of the company are entitled to decide even to the extent of overruling the directors.

From the evidence of Maureen Waitherero, she is the majority shareholder with 600 shares as opposed to Leone Guiseppé's daughter who has 400 shares. As the majority shareholder, she is the proper person to defend the suit and institute the counter claim.



16. On the issue of the first defendant's acquisition of the title deed, the best authority on the issuance of the title deeds, the Land Registrar, said that same was acquired procedurally. There can be no better evidence than this. This evidence is supported by the extract of the presentation book for July 8, 1994 which shows that the plaintiff was on that day transferring the suit land to the first defendant. It is supported further by the Registrar's evidence that the title deed presented to him by the first defendant was the original title deed.

In addition to the above, there is the plaintiff's lack of the original title deed which led to the re-issuance. Finally, there is the plaintiff's failure to heed the lawfully issued order by the Land Registrar under Section 14(1) (a) of the *Land Registration Act* to return the irregularly issued second title deed.

17. On whether the plaintiff's second title deed was issued through the due process as provided for in law, I find that it was but the problem with it all is that it was based on a misrepresentation. It was not based on the truth. That is why it was recalled when the truth was discovered.

18. On the final issue of who is the bonafide owner of the suit land, it is not in doubt that it is the first defendant. They hold the original title deed and the presentation book for July 8, 1994 shows that the plaintiff transferred the land to the first defendant.

19. Finally, it should not be forgotten that it is the plaintiff who has the burden of proof in this case to prove all the five particulars of fraud set out in paragraph 10 of the plaint dated December 5, 2016. Not a single particular of fraud has been proved.

20. For the above stated reasons, I dismiss the plaintiff's suit against the defendants with costs. For the same reasons, I allow the first defendant's counterclaim dated January 23, 2018 as drawn and with costs.

21. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 27TH DAY OF MARCH, 2023.

M.N. GICHERU

JUDGE

