



**Wachira v Muiruri & 2 others (Environment & Land Case 425 of 2017)
[2023] KEELC 16350 (KLR) (21 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16350 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 425 OF 2017
MN GICHERU, J
MARCH 21, 2023**

BETWEEN

GODFREY GACHURI WACHIRA PLAINTIFF

AND

DOROTHY NYAMBURA MUIRURI 1ST DEFENDANT

CHIEF LAND REGISTRAR, KAJIADO 2ND DEFENDANT

**ATTORNEY GENERAL (ON BEHALF OF MINISTRY OF HOUSING & URBAN
DEVELOPMENT) 3RD DEFENDANT**

JUDGMENT

1. The Plaintiff's claim against the Defendants is as follows;
 - a. ksh 8, 500,000/-
 - b. General Damages for breach of statutory duty.
 - c. Costs of the suit.
2. The Plaintiff's case is as follows. On 5/1/2013 he entered into an agreement with the first Defendant for purchase of LR Kajiado/Kaputiei-North/2087. The first Defendant was the registered owner of the land while the Plaintiff was the purchaser. The purchase price was ksh 8.5.million.
3. On 4/4/2013, a day before the agreement, the Plaintiff had conducted a search at Kajiado Land Registry and confirmed that the first Defendant was the registered owner of the suit parcel. On the date of the agreement, the Plaintiff paid ksh 3.5 million to the first Defendant. He paid a further ksh 500,000/= to the first Defendant on 3/5/2013 and a final payment of ksh 3.5 million on 24/5/2013. The first Defendant received some of the payments in cash and others through the bank.



4. A second search conducted by the Plaintiff's advocate established that the suit land was not in the name of the first Defendant but in the name of one Havilah Limited. The Plaintiff now prays for a refund of the purchase price from the first Defendant and general damages from the second Defendant for breach of statutory duty by issuing him with a certificate of official search showing that the suit land was in the name of first Defendant when it was in the name of Havilah Limited.
5. In support of his case, the Plaintiff filed the following evidence.
 - a. A copy of register for the suit land with eleven entries running from 29/9/92 to 15/3/2013.
 - b. Copy of certificate of official search dated 4/4/2013 showing that the first Defendant is the registered proprietor of the suit land.
 - c. Copy of agreement of sale for the suit land dated 5/4/2013.
 - d. Copy of agreement for a friendly loan dated 24/5/2013 between the Plaintiff and Kenneth Ng'ang'a.
 - e. Copy of title deed for the suit land dated 6/9/2011 in the name of first Defendant.
 - f. Extract of the search register for the month of April, 2013.
 - g. Copy of withdrawal voucher for ksh 1.5 million by the Plaintiff. It is dated 5/4/2013 and issued by Family Bank Kitengela Branch.
 - h. Copy of letter by the Land Registrar Kajiado dated 15/7/2013 denying that the entries in the register particularly entry numbers 8 and 9 were not genuine.
 - i. Copy of the Plaintiff's bank statement showing the transaction of ksh 3.5 million to the first Defendant's account.
6. Even though there is a reply to the second and third Defendant's defence dated 10/6/2015, I have not seen any defence or other pleading by the said Defendants.
7. The first Defendant did not file any memorandum of appearance or other pleadings in this case. The case against her has proceeded as undefended.
8. At the trial on 15/6/2022, the Plaintiff testified by adopting his witness statement and documents.
9. Counsel for the Plaintiff filed written submissions on 6/12/2022 and 16/12/2023.
10. I have carefully considered the evidence adduced by the Plaintiff in this suit. I have also considered the submissions by the learned counsel for the Plaintiff, the law cited therein and the entire record. I find that there are three issues raised in the suit.
 - i. Whether the case against the first Defendant is proved to the required standard?
 - ii. Whether the second and Defendants are liable for breach of statutory duty owed to the Plaintiff?
 - iii. Who should pay the costs of the suit?
11. On the first issue, I find that the Plaintiff has proved his case against the first Defendant to the required standard. He has proved that he paid her ksh 8.5 million for the purchase of the suit. He never got the land because the first Defendant had transferred it to another entity called Havila Limited on 24/4/2013. When the first Defendant was receiving payments for the suit land from the Plaintiff, she had already sold the land to the said Havila Limited, if she ever owned it in the first place.



12. Regarding the second issue, I find that the second and third Defendants are not liable to pay the Plaintiff general damages for breach statutory duty. One of the documents filed by the Plaintiff is a copy of the letter dated 15/7/2013 written by the Land Registrar, Kajiado to the Criminal Investigating Department, Kitengela.

In the letter the Land Registrar says that entries 8 and 9 in the copy of register were fraudulent. Also said to be fraudulent is the copy of title deed in the name of the first Defendant. If the Plaintiff's own documents say that the suit land did not belong to the first Defendant, it then means that he does not have any official documents showing that the first Defendant ever owned the suit land.

13. Finally on costs, I find that they should follow the even and they should be borne by the first Defendant.

For the above reasons, I enter judgment for the Plaintiff against the first Defendant for ksh 8.5 million together with interest at court rates from the date of payment of each of the instalments until the date of refund in full. The suit against the first and second Defendants is dismissed with no order as to costs. The costs of the suit to the Plaintiff as against the first Defendant.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 21ST DAY OF MARCH, 2023.

M.N. GICHERU

JUDGE

