



**Nyakwara v Kingori (Environment & Land Case 289 of 2016)
[2023] KEELC 18643 (KLR) (28 June 2023) (Judgment)**

Neutral citation: [2023] KEELC 18643 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 289 OF 2016**

**A OMBWAYO, J
JUNE 28, 2023**

BETWEEN

JARED OMWOYO NYAKWARA PLAINTIFF

AND

ALICE KINGORI DEFENDANT

JUDGMENT

1. Jared Omwoyo Nyakwara (hereinafter referred to as the plaintiff) has come to court against Alice Kingori (hereinafter referred to as the defendant) claiming that At all material times to this suit the plaintiff is the legal owner of the parcel known as Nakuru Municipality Block15/103. That he has constructed a house in the suit land where he resides. He bought the land in the year 2013 and has remained the owner to date. That the defendant has been disturbing the plaintiff hence denying him enjoyment of this suit property. The cause of action arose within the jurisdiction of this honorable court.
2. The plaintiff prays for an order of permanent injunction restraining the defendants by themselves, their agents and/or servants from entering, trespassing, leasing, occupying, transferring, cultivating, remaining or in any other way from interfering with the plaintiff's parcel of land known as Nakuru Municipality Block 15/103. He prays for costs of the suit and interest.
3. The defendant filed defence and counter claim whose import is that the plaintiff is not the owner of the suit property and the purported agreement of sale is null and void. The defendant denies that the plaintiff occupies the property. The defendant states that the alleged sale was fraudulently done and that the certificate of title is a forgery. The defendant alleges that he has the key to the house and that she is in possession.



4. In the counter-claim the defendant states that the deceased James Wanjohi Kingori is the lawful owner of the house and suit property LR Nakuru/Municipality/Block 15/103 and that the defendants family has been in occupation since 1973 and has overriding intent in the land.
5. She prays that the certificate of lease for LR Nakuru/Municipality Block 15/103 held by the plaintiff previously held by John Warui Mathenge be cancelled and a declaration that LR Nakuru/Municipality Block 15/103 belongs to the deceased James Wanjohi Kingori. She prays for costs of the suit.
6. When the matter came for hearing the plaintiff testified that he bought the suit property from John Warui Mathenge on June 15, 2013. He claims to have bought the property after carrying out an official search. He paid Kshs1,500,000 as purchase price and that later he paid kshs7,000,000. The property was thereafter transferred to him. The tenant in occupation moved out and he took possession until January 2015 when he decided to renovate the house and contracted a security guard to secure the house and take care of the building. In 2016, the guard informed him that the defendant had invaded the property. He decided to come to court.
7. PW2 Benson Anyuka testified that the plaintiff acquired the suit parcel and allowed him to cultivate the same. He was not present when the plaintiff bought the land. He stopped utilizing the land in 2016
8. PW3 Raymond Gitonga the Land Registrar came to court with the land records to the suit property. According to the Land Registrar the property was registered in the name of James Wanjohi Kingori on 28/8/1985. A certificate of lease was issued on May 15, 1992 and on July 31, 1992 a charge was registered in favour of KCB, James Wanjohi Kingori was the borrower. On May 12, 2004, the property was transferred to John Warui Mathenge though there was no transfer executed by James Wanjohi Kingori. John Warui Mathenge transferred the property to Jared Omwoyo Nyakwara on August 23, 2013. The Land Registrar had the transfer documents indicating that the land was transferred to the plaintiff however there was no evidence of payment and stamp duty. Land rents, rates consent to transfer.
9. On cross examination he states that the certificate of lease of John Warui Mathenge was surrendered and cancelled. There was no charge or discharge of charge in the parcel file.
10. The defence called DW1, Alice Kingori who testified that the suit land in section 58 Nakuru has a 3 bedroomed house owned by her father. She produced a certificate of lease issued in 1974. She was 3 years old when her father bought the land. On the land there is the house purchased through Housing Finance Corporation Kenya. Her father lived in the house until 2000 when they moved to Gilgil. She stayed in the house until 2007 when she got married and went to her matrimonial house. The property was given an agent to manage and in 2016, she was informed that the plaintiff was claiming ownership of the land. She denies the allegation that her father sold the land to John Warui Mathenge.
11. DW2 Daniel Gitau an employee of Metrocosmo being the current property manager states that the property has always been managed by his company on behalf of James Kingori Wanjohi and Ann Kingori.
12. I have considered the evidence on record and do find that the register for the suit property was opened on August 28, 1985 and registered in the names of James Wanjohi Kingori. A certificate of lease was issued on May 15, 1992. Mr. Wanjohi borrowed money form Housing Finance Corporation Kenya and a charge was registered on the property on July 31, 1992 however there is no records of the charge or discharge of charge. The property was registered in the names of John Warui Mathenge on May 12, 2004 and a certificate of lease was issued on the same date. There is no sale agreement between James Wanjohi Kingori and John Warui Mathenge. There is no transfer document executed between



James Wanjohi Kingori and John Warui Mathenge. There is no surrender of certificate of lease by James Wanjohi Kingori to enable the Land Registrar issue a new title.

13. John Warui Mathenge entered into agreement of sale with Jared Omwoyo Nyakwara and the property was transferred to Jared Omony Nyakwara . A certificate of lease was issued after the land had registered in the names of Jared Omwoyo Nyakwara. The land was registered in the names of Jared Omwoyo Nyakwara on August 23, 2013 and certificate issued on the same date. On January 26, 2016 a restriction was entered by the Land Registrar due to suspected fraud.
14. This court finds that there is evidence of fraud in the transaction in respect of the suit parcel as there is no document to demonstrate that James Wanjohi Kingori sold the land to James Warui Mathenge. There is no evidence of the sale. No transfer documents, no consent to transfer from the commissioner of land. Moreover no evidence of surrender of title by James Wanjohi Kingori.
15. The plaintiff has a title that was obtained after an alleged sale by John Warui Mathenge. This court is of the view that John Warui Mathenge did not obtain a valid title to the property and therefore had nothing to transfer to the plaintiff. A person who has an illegal title cannot confer rights to another person because the title is a nullity. In this case John Warui Mathenge had an invalid title and therefore had nothing to transfer to Jared Omwoyo Nyakwara. In *Wambui v Mwangi & 3 others* (Civil Appeal 465 of 2019) [2021] KECA 144 (KLR) (19 November 2021) (Judgment), the court of Appeal observed as follows:-

“The jurisprudence relied upon by the appellant and which we find prudent not to replicate are as already highlighted above. We have given due consideration to them in light of the record as assessed herein by us. Our take on the same is that the jurisprudential thread running through all of them is that no court of law should sanction and pass as valid any title to property founded on: fraud; deceitfulness; a contrived decree; illegality; nullity; irregularity, unprocedurality or otherwise a product of a corrupt scheme.”

16. The upshot of the above is that the plaintiff's claim falls and is dismissed with costs.
17. The defendant case succeeds in terms of the certificate of lease for LR Nakuru/Municipality Block 15/103 held by the plaintiff previously held by John Warui Mathenge be cancelled and a declaration that LR Nakuru/Municipality Block 15/103 belongs to the deceased James Wanjohi Kingori. Costs of the suit to the defendant. Costs to the defendants. Orders accordingly.

JUDGMENT, DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 28TH DAY OF JUNE 2023.

A .O. OMBWAYO

JUDGE

