



REPUBLIC OF KENYA



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**Kamwere v Mwangi & another (Environment & Land Case E085 of 2022)
[2023] KEELC 20890 (KLR) (18 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20890 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E085 OF 2022**

JG KEMEI, J

OCTOBER 18, 2023

BETWEEN

JANE MUGURE KAMWERE PLAINTIFF

AND

GEORGE KANGATA MWANGI 1ST DEFENDANT

LAND REGISTRAR - RUIRU 2ND DEFENDANT

JUDGMENT

1. Jane Mugure Kamwere , the Plaintiff filed suit against the Defendants on 22/7/2022 seeking the following orders;
 - a. A declaration that the entries numbers 4, 5, 6, 7, 8 and 9 in the register of Title No. Ruiru East Block 5/148 are illegal, fraudulent, null and void ab initio.
 - b. A permanent injunction restraining the 1st Defendant whether by himself, his agents, employees, servants or otherwise whatsoever any person claiming under him howsoever from selling, disposing, pledging, alienating from taking possession or in any other manner dealing with the property known as Title No. Ruiru East/Block 5/148 or any other part thereof that could interfere with the Plaintiff's ownership.
 - c. A permanent injunction restraining the 1st Defendant whether by himself, his agents, employees, servants or otherwise form affecting any changes or alteration whatsoever to state and/or condition of the suit property known as Title No. Ruiru East/Block 5/148 or any part thereof.
 - d. An order directed to the 2nd Defendant for cancellation of Entries numbers 4, 5, 6, 7, 8 and 9 in the register of Title number Ruiru East/Block 5/148.



- e. An order directed to the 2nd Defendant for the rectification of the Register in respect of the Title Number Ruiru East/Block 5/148 and restore the name of the Plaintiff as the registered proprietor of the suit property thereof.
 - f. An award of damages against the Defendants jointly and severally for the loss and deprivation for use of property.
 - g. Costs of the suit together with interest.
 - h. Any other or further relief that the Honourable Court may deem justiciable in the circumstances to grant.
2. It is the Plaintiff's case that she acquired the suit land through her membership with Kiambu Wendani Women Investors Limited which owned the mother title. That upon purchase of shares she was issued with a Share Certificate No 349 and her name was entered in the members register as owner of parcel No 148 upon subdivision of the mother title. That on 12/1/1988 she became registered as owner of the suit land. She has been in possession of the suit land from 1988 to date.
 3. She states that on the 2/5/2017 a group of 6 men invaded the land and attempted to fence the same in the pretext that the 1st Defendant had obtained title. She reported the matter to the local Chief at Kahawa Sukari who wrote a letter to the OCPD, Kahawa Sukari to investigate the matter. She also detailed her lawyer to carry out a search of the property and to her horror she discovered that the 1st Defendant had become registered as owner of the suit land in 2015 without her knowledge and consent. She again relayed the information to the OCPD Ruiru who upon carrying out investigations traced the 1st Defendant. That upon being interrogated the said 1st Defendant admitted in a sworn affidavit dated the 4/2/2021 that he has no claim over the suit land and did not know who and how he became registered as owner of the suit land.
 4. It is the contention of the Plaintiff that she neither sold, disposed transferred and or lost control of her property since 1988 to any body leave alone the 1st Defendant. Under para 20 of the Plaintiff she pleaded particulars of fraud and illegalities on the part of the Defendants in causing the title to be registered in the name of the 1st Defendant without her consent and knowledge, an act that she terms fraudulent and illegal.
 5. That being the legitimate owner of the suit land, she urged the Court to cancel the offending entries and revert the title to her name.

The case of the Defendants

6. According to the record summons to enter appearance, the Plaintiff and all the pleadings of the Plaintiff were served upon the Defendants on the 30/9/2022 but the same did not elicit any response. The claim of the Plaintiff is therefore unchallenged. The case of the Plaintiff proceeding to hearing ex parte.

The hearing

7. At the hearing of the suit, the Plaintiff's suit was led by Jane M. Kamwere who solely testified. She relied on her witness statement dated the 1/7/2022 as her evidence in chief. In further support of her case, she produced the list of documents on page 16 – 51 in the trial bundle which documents were marked as PEX NO 1-8.
8. The witness informed the Court that Kiambu Wendani Women Investors Limited owned the mother title. That she was a member of the company and was allocated plot No 148 took possession and



obtained title in 1988. That since 1988 she has not sold the land to anybody nor lost possession. That she in possession.

9. The Plaintiff filed written submissions which I have read and considered.

Analysis and determination

10. The key issue is whether the Plaintiff has proven her case.

11. It is trite that even where the case of the Plaintiff is undefended like in this instance the Plaintiff continues to bear the burden of proof to the standard of proof which in civil cases is on balance of probabilities.

12. It has not been disputed that the Plaintiff was the registered owner of the land as at 12/1/88. According to the Green Card produced by the Plaintiff there are other entries in the names of third parties on the register. As stated earlier the case of the Plaintiff is undefended. Being unassailed the Court takes the case of the Plaintiff as true.

13. Section 26 of the *Land Registration Act*:-

“(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor 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, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

14. Fraud must be pleaded and proved as can be seen in the case of *Kinyanjui Kamau Vs. George Kamau* [2015] eKLR where the Court stated as follows:-

“... it is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo -vs- Ndolo* [2008]1 KLR (G & F) 742 wherein the Court stated that: “...we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in Criminal Cases...” In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

15. The Court finds that the case of the Plaintiff being undefended it is allowed as prayed to the extent that it relates to the entries of the 1st Defendant.

16. With respect to the prayers in respect to entries Nos 4-6 my perusal of the Green Card shows the following entries;



Entry No.	Date	Name of Registered Proprietor	Address and Description of Registered Proprietor	Consideration and Remarks	Signature of Registrar
1.	12.1.88	Government of Kenya	Signed		
2.	1.12.88	Jane Mugure Kamwere	Box 30200 NRB	Signed	
3.	12.1.88	Title Deed	Issued	Signed	
4.	10.2.98	Francis Kanyingi Kamau	10/1021633/64	200,000/-	Signed
5.	”	Title Deed	Box 22741 NRB	Issued	Signed
6.	17.7.09	Peter Nduati Mbau	ID/1452917	Signed	
7.	“	Title Deed	Issued	Signed	
8.	21.4.15	George Kang'ata Mwangi	ID/10621084	Signed	
9.	”	Title Deed	Issued	Signed	

17. It is the view of the Court that the Court is unable to interfere with entries Nos 4-7 because the Plaintiff failed to enjoin these parties. The Court finds that there is no case before the Court with respect to entries related to Francis Kanyingi Kamau and Peter Nduati Mbau. In addition no evidence was led with respect to the said entries.
18. With respect to the order on damages the Court declines to award it as the Plaintiff failed to place any evidence before the Court.
19. Final orders for disposal
- a. A declaration is hereby issued that the entries numbers 8 and 9 in the register of Title No. Ruiru East Block 5/148 are illegal, fraudulent, null and void ab initio.
 - b. A permanent injunction be and is hereby issued restraining the 1st Defendant whether by himself, his agents, employees, servants or otherwise whatsoever any person claiming under him howsoever from selling, disposing, pledging, alienating from taking possession or in any other manner dealing with the



property known as Title No. Ruiru East/Block 5/148 or any other part thereof that could interfere with the Plaintiff's ownership.

- c. A permanent injunction be and is hereby issued restraining the 1st Defendant whether by himself, his agents, employees, servants or otherwise from affecting any changes or alteration whatsoever to state and/or condition of the suit property known as Title No. Ruiru East/Block 5/148 or any part thereof.
- d. An order is hereby directed to the 2nd Defendant for cancellation of Entries numbers 8 and 9 in the register of Title number Ruiru East/Block 5/148.
- e. An order is hereby directed to the 2nd Defendant for the rectification of the Register in respect of the Title Number Ruiru East/Block 5/148 in line with (d) above.
- f. An award of damages against the Defendants jointly and severally for the loss and deprivation for use of property is declined.
- g. No orders as to costs.

20. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 18TH DAY OF OCTOBER, 2023 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

