



**REPUBLIC OF KENYA**

**IN THE LAND AND ENVIRONMENT COURT**

**AT ELDORET**

**CIVIL SUIT NO. 11 OF 2014**

**ANNA JEBICHI SIMATWO.....PLAINTIFF**

**VERSUS**

**THE ATTORNEY GENERAL.....1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR ELDORET.....2<sup>ND</sup> DEFENDANT**

**THE NATIONAL LAND COMMISSION.....3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

By a plaint dated the 16<sup>th</sup> January 2014 the Plaintiff herein sued the Defendants jointly and severally seeking for the following orders:

- a) A declaration that the cancellation of the Plaintiff's title deed to land parcel No. SOY/KIPSOMBA BLOCK 8 (KOECH & PARTNERS)33 by the 2<sup>nd</sup> Defendant Land Registrar of Eldoret on the 3<sup>rd</sup> day of June 2013 is unlawful and the same should and ought to be set aside.*
- b) An order directing the Defendant No. 2 to rectify the register and restore the Plaintiff as owner and registered proprietor of Land Parcel No. SOY/KIPSOMBA BLOCK 8 (KOECH & PARTNERS)33.*
- c) Costs of this suit.*
- d) Any further or other relief this Honourable court may deem fit to grant.*

**PLAINTIFF'S CASE**

PW1 adopted her statement dated 16<sup>th</sup> January 2014 and stated that she is the owner of land parcel No. SOY/KIPSOMBA BLOCK8 (KOECH & PARNERS)33 which she was registered as such on 18<sup>th</sup> September 2002 after the same was subdivided out of a bigger parcel of land known as SOY/KIPSOMBA BLOCK 8 (KOECH & PARNTERS)21.

PW1 further stated that she later transferred the land to her son (now deceased) known as JOHN KIPROTICH MELI who refused to take the parcel of land as he already had another parcel of land known as SOY/KIPSOMBA BLOCK8 (KOECH & PARTNERS)34.

It was PW1 evidence that the son re-transferred the land back on 4<sup>th</sup> November 2002 to her to enable her look after his siblings and that the son voluntarily went through all processes of registration including obtaining Land Board Consent, signing all transfer of land documents and paying stamp duty to the 2<sup>nd</sup> Defendant.

PW1 stated that she was issued with a title deed by the 2<sup>nd</sup> Defendant which she kept together with other transfer documents relating to the said parcel of land. PW1 told the court that in late May or early June 2013 unknown persons broke into her the house at Soy and stole many of her personal items which included:

- a) Her National Identity Card*
- b) The title deed to land parcel No. SOY/KIPSOMBA BLOCK 8 (KOECH & PARTNERS)33*

***c) Various land documents including duplicates copies of signed transfer of land, copies of land control consent copies and receipts for paying stamp duties or land parcel No. SOY/KIPSOMBA BLOCK 8 (KOECH & PARTNERS)33.***

It was her evidence that she reported the matter to Eldoret Police Station and was issued with a police abstract and further reported to the Land Registrar. She stated that when she went to the Land Registry in Eldoret she was surprised to find out that the 2<sup>nd</sup> Defendant Land Registrar had cancelled her title deed on 3<sup>rd</sup> June 2013.

PW1 also testified that the cancellation by the Land Registrar was done without giving notice or a court order to do so. PW1 produced a copy of Green Card, Consent for sub-division of original title – SOY KIPSOMBA BLOCK 8 (Koech & partners)21, Mutation Form, Copy of the search, Police abstract and a Notice of intention to sue the Attorney General and the Defendants. PW1 urged the court to grant the orders as prayed in the plaint.

On cross examination PW1 stated that her husband had purchased the original title (No. 21) from partners SAMOEI WILSON KOECH and SIMOTWO and reiterated that she had reported the loss of the documents to the police and the land Registrar.

#### **DEFENCE CASE**

Counsel for the Defendant informed the court that they did not wish to call any witness therefore the defence was closed without tendering any evidence.

#### **PLAINTIFF'S SUBMISSIONS.**

Counsel for the Plaintiff reiterated the Plaintiff's evidence and stated that Plaintiff's suit is unchallenged and that the unilateral cancellation of the Plaintiff's title without notice was unlawful.

Counsel further submitted that the Plaintiff had proved her case on a balance of probabilities and produced documents to show that she was the registered owner of the suit land and as such she is protected by the law.

Mr. Chesoni cited the case of **Republic v Chief Land Registrar & another Ex-parte Yosabia Kerubo Manyura [2018] eKLR** where the District Land Registrar had administratively cancelled the title deed issued to the exparte Applicant as owner of a parcel of land known as KISII/WANJARE/1660 and that action resulted in the land being reversed back to a deceased person who had before his death transferred it to the registered proprietor who was the ex-parte Applicant. The court held that the Land Registrar had no powers to cancel the title deed of the ex- parte Applicant without giving him any notice.

Mr. Chesoni submitted that the Plaintiff should be awarded Kshs. 1million as general damages for wrongful cancellation of title and relied on the case of **Shimoni Resort v Registrar of Titles & 5 others [2016] eKLR** where the court awarded the Applicant Kshs 2million as damages for breach and wrongful cancellation of title.

Counsel urged the court to grant the orders sought in the plaint with costs to the Plaintiff.

#### **ANALYSIS AND DETERMINATION**

This matter was undefended as it was indefensible. The facts of the case are clear from the pleadings, the documents produced and the evidence by the Plaintiff. The Plaintiff was the registered owner of the suit land and the Land Registrar unilaterally cancelled the Plaintiff's title without any notice.

There was no reason advanced as to why the title was cancelled as there was neither a complainant nor a court order sanctioning the same. In the case of **Lawrence Muriithi Mbabu v District Land Registrar, Nyeri & another; John Githui Kinyua (Interested Party) [2019] eKLR**, the court held that cancellation of a title deed without inviting the registered owner of the suit land for a hearing was unlawful and invalid. The Land Registrar was ordered to rectify and reinstate the name of the Applicant in the register.

Section 79 of the Land Registration Act provides for instances where the Land Registrar can rectify the register as follows;

##### ***“79 Rectification by Registrar***

***(1) The Registrar may rectify the register or any instrument presented for registration in the following cases—***

***in formal matters and in the case of errors, mistakes or omissions not materially affecting the interests of any proprietor;***

***a) in any case and at any time with the consent of all affected parties; or***

***b) if upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the Registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel;***

***c) for purposes of updating the register;***

d) for purposes of correcting the name, address or other particulars of the proprietor upon the written application by the proprietor in a prescribed form.

(2) No alteration affecting the title of the proprietor may be made pursuant to sub-section (1) without the proprietor's consent unless—

- a) the proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission; or
- b) it would for any other reason be unjust for the alteration not to be made,
- c) Provided that a written notice of ninety days shall be given to the proprietor of such intention to make the alteration.

The above section gives the Registrar powers to rectify the register upon giving notice to the concerned parties. It should be noted that the Registrar can rectify, errors, mistakes, omission provided they do not materially affect the proprietary interests of a party. The cancellation materially affected the proprietary interest of the Plaintiff hence the cancellation was illegal and it did not conform to the law and procedure.

In the case of Mary Ruguru Njoroge –Vs- John Samuel Gathuma Mbugu [2014] eKLR where the court held that:

*“The court too has powers to order the rectification of the title or register in appropriate circumstances. The court will under Section 80(1) of the Land Registration Act order the cancellation or amendment of an entry or any registration when it is satisfied that the registration was obtained made or omitted by fraud or mistake. Registration under the said Section, in my view, refer to and includes a title or entry in the register or on the title itself. It is however upto the party seeking rectification to prove to the court’s satisfaction that there has been fraud or a mistake in the registration. In my view, the mistake referred to under section 80(1) includes both a slip like a typographical error and a substantive mistake like the registration of a wrong or erroneous name. in equity, the court also has powers to rectify in suitable circumstances any written instrument to conform with the agreement between the parties, where the instrument, by mistake, does not express the agreement and the mistake justifies the intervention of the court.”*

I have considered the pleadings, the evidence by the Plaintiff and the submissions by Counsel and find that the Plaintiff has proved her case on a balance of probabilities. I therefore order for the rectification of the register and restore the Plaintiff as owner and registered proprietor of Land Parcel No. SOY/KIPSOMBA BLOCK 8 (KOECH & PARTNERS)33. The Defendants to pay costs of the suit and general damages of Kshs 500,000/ to the Plaintiff.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 31<sup>st</sup> DAY OF JANUARY, 2022.**

**M.A. ODENY**

**JUDGE**

***NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Judgment has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.***