



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO 873 OF 2017

RUTH WANJA GATERE

CATHERINE WANGECHI N. GATERE

(Suing as co-administrators

of the Estate of JAMES TUMUTI GATERE).....PLAINTIFFS

=VERSUS=

ERASTUS MUTARU GACHAU.....1ST DEFENDANT

SARAH NYAMBURA NJOROGE.....2ND DEFENDANT

LAND REGISTRAR THIKA.....3RD DEFENDANT

ATTORNEY GENERAL.....4TH DEFENDANT

JUDGMENT

1. This suit was initiated by the administrators of the estate of the late **James Tumuti Gatere** on 20/12/2017, through a plaint dated 14/12/2017. The case was heard in open court on 17/1/2022. Their case is that the late **James Tumuti Gatere (the deceased)** was at all material times the registered proprietor of **Land Parcel Number Ruiru/Ruiru East Block 7/123**, measuring approximately 0.4438 of a hectare and situated in Ruiru, Kiambu County. The deceased died on **29/7/2012**. A grant of letters of administration relating to the deceased's estate was issued by the High Court at Nairobi on **12/11/2014**. The grant was confirmed on **17/6/2015**.

2. They contend that when they went to the Lands Registry to effect conveyance of the suit property in terms of the certificate of confirmation of grant, they discovered that the suit property had been fraudulently transferred from the name of the deceased to the names of the 1st and 2nd defendants. The fraudulent transfer was effected on **24/2/2017**, approximately five years after the death of the deceased. The 1st plaintiff who testified as PW1 stated that they never sold nor transferred the suit property on behalf of the estate. She added that the deceased having died in 2012, he could not have resurrected to effect a transfer in 2017.

3. The 1st and 2nd defendants neither entered appearance nor filed defence. The 3rd and 4th defendants filed a statement of defence dated 1/2/2018 in which they denied fraud on part of the 3rd defendant. They contended that registration of the suit property in the names of the 1st and 2nd defendant was effected by the 3rd defendant on the basis of the documents which the 1st and 2nd defendants presented to the 3rd defendant's office and the 3rd defendant effected the transfer believing that the documents were genuine. They denied culpability on the part of the 3rd defendant. They did not, however, attend the hearing, hence they neither led evidence nor presented submissions.

4. I have considered the pleadings, evidence and submissions in this suit. Two questions fall to be answered in the suit. The first question is whether the transfer of the suit property to the 1st and 2nd defendants on 24/2/2017 was fraudulent. The second question is whether the parcel register should be rectified and the title issued to the 1st and 2nd defendants on 24/2/2017 nullified.

5. The impugned transfer took place on 24/2/2017. Evidence was tendered by the plaintiff demonstrating that the deceased died on 29/7/2012. The deceased could not, in the circumstances, have effected a transfer to the 1st and 2nd defendants in 2017. The deceased having died in 2012, a proper conveyance of the suit property in 2017 would only be effected by the duly appointed legal representatives of his estate.

6. Secondly, the plaintiffs tendered evidence to the effect that, as the duly appointed administrators of the estate of the deceased, they never conveyed the suit property to the 1st and 2nd defendants in 2017 or at all. The case of the plaintiffs is uncontroverted. The 1st and 2nd defendants failed to respond to the summonses to enter appearance and demonstrate how they procured the registration of the suit property in

their names in 2017, five years after the death of the deceased.

7. For the above reasons, the court finds that the plaintiffs have sufficiently proved fraud and irregularity in the registration of the suit property in the names of the 1st and 2nd defendants. It is therefore the finding of the court that the transfer of the suit property into the names of the 1st and 2nd defendants on 24/2/2017 was fraudulent.

8. Consequently, it is the further finding of the court that the land register relating to the suit property should be rectified and the fraudulent title issued to the 1st and 2nd defendants should be nullified forthwith.

9. In the end, the court makes the following disposal orders in this suit:

(a) The relevant Land Registrar is hereby directed to forthwith rectify the Land Register relating to Ruiru/Ruiru East Block 7/123 by nullifying entry numbers 6 and 7 to restore the land to the names of James Tumuti Gatere and thereafter process conveyance documents presented by the administrators of the late James Tumuti Gatere's estate.

(b) An order is hereby issued permanently restraining the 1st and 2nd defendants together with their agents and/or persons acting on their authority against entering, remaining on or dealing with Land Parcel Number Ruiru/Ruiru East Block 7/123.

(c) An order of eviction from the said land is hereby issued against the 1st and 2nd defendants and the Police Officer Commanding the local Police Station is directed to ensure law and order during the eviction, if necessary.

(d) The 1st and 2nd defendants shall bear costs of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 27TH DAY OF JANUARY 2022

B M EBOSO

JUDGE

In the Presence of: -

Mr Mbabu for the Plaintiffs

Court Assistant: Phyllis Mwangi