



**Nafula v Nasir & another (Environment & Land Case 332 of 2017)  
[2022] KEELC 3984 (KLR) (26 January 2022) (Judgment)**

Neutral citation: [2022] KEELC 3984 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 332 OF 2017**

**M SILA, J**

**JANUARY 26, 2022**

**BETWEEN**

**FORCHEL FARIDAH NAFULA ..... PLAINTIFF**

**AND**

**ALI SAID NASIR ..... 1<sup>ST</sup> DEFENDANT**

**JOSHUA KIPTOO ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

(Suit filed by plaintiff demanding for release of her original title deed held by the defendants; plaintiff being registered proprietor of the suit land; 1<sup>st</sup> defendant taking the title deed to the 2<sup>nd</sup> defendant so that it can be used as security for a loan to the 1<sup>st</sup> defendant; plaintiff not privy to this transaction; unlawful for the defendants to have used the plaintiff's title deed without her consent; no lawful reason for the 2<sup>nd</sup> defendant to keep the title deed; judgment entered for the plaintiff)

1. This suit was commenced through a plaint filed on September 18, 2017. The plaintiff's case is that she is the registered owner of the land Subdivision Number 5443 (Original Number 5407/37) section III MN (cr no 49905) which she avers she purchased on November 23, 2011. She then became registered as proprietor on March 6, 2012. On October 25, 2013, she got married to the 1<sup>st</sup> defendant under Islamic law and they lived together as husband and wife. She avers that on December 21, 2013, she travelled to Germany and left the original title deed under the care of the 1<sup>st</sup> defendant. In October 2016, she received information that the 1<sup>st</sup> defendant has married another wife and had embarked on disposing her properties. She travelled back to Kenya and entered the country on August 3, 2017, and upon reaching her home, she did not find the 1<sup>st</sup> defendant, nor her motor vehicles, and the original title deed to the suit land. She was approached by the 2<sup>nd</sup> defendant who alleged to have given the 1<sup>st</sup> defendant a loan against the security of her title deed, and the 2<sup>nd</sup> defendant was thus holding the original title deed as security, and demanded to be paid back his loan before releasing it. It is the plaintiff's contention



that having not signed any document authorizing her title deed to be used as security, the action of it being held as security is illegal. In the suit the plaintiff seeks the following orders :-

- a. A declaration that the defendants' action of withholding the plaintiff's title deed is illegal.
  - b. An order directing the immediate release of the original title deed.
  - c. Any other or further relief that this court may deem fit.
  - d. Costs of the suit.
2. The defendants did not enter appearance and did not file any defence despite being duly served. At the hearing of the suit, the plaintiff relied on a written statement which more or less describes what I have already mentioned above and also availed a copy of the title deed and search to demonstrate that she is the owner of the suit land. She asserted that she never gave her husband any permission to use her title to obtain a loan from the 2<sup>nd</sup> defendant.
3. I have considered the matter. The plaintiff has demonstrated that she is the owner of the suit land. I have seen the copy of title and it shows that she is the sole registered proprietor of the suit land. It is therefore only her who has rights over the suit land. That includes the right to deal with it or the right to use it as security. No other person has these rights including the 1<sup>st</sup> and 2<sup>nd</sup> defendants. It is alleged that the 1<sup>st</sup> defendant used her title deed as security to obtain a loan from the 2<sup>nd</sup> defendant. The defendants have not come to court to challenge this claim. I therefore have no reason to doubt the word of the plaintiff. It was unlawful for the defendants to deal with the plaintiff's title deed and cause it to be used for purposes of obtaining a loan. The title deed could not be used as security for a loan without the consent of the plaintiff. It follows that the 2<sup>nd</sup> defendant has no legal basis for keeping hold of the plaintiff's title deed. He ought to have known that the said title cannot be used as security. Neither can he try to compel the plaintiff to pay the loan to the 1<sup>st</sup> defendant if the plaintiff was not a party to their transaction. I have no reason not to issue an order to the 2<sup>nd</sup> defendant directing him to immediately return the original title deed to the plaintiff. I therefore issue orders in terms of prayers 1 and 2 of the plaint.
4. The plaintiff will also have the costs of this suit jointly and/or severally against both defendants.
5. Judgment accordingly.

**DATED AND DELIVERED THIS 26 DAY OF JANUARY 2022.**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT MOMBASA.**

