



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC CASE NO. 163 OF 2018

(FORMERLY ELC CASE NO. 267 OF 2016 AT MILIMANI)

JOSEPH NDEGWA.....PLAINTIFF

-VERSUS-

CLEOPHAS MALEKA RICHARD.....1ST DEFENDANT

EPHANTUS MURIITHI MWANIKI.....2ND DEFENDANT

DISTRICT LAND REGISTRAR, KAJIADO COUNTY....3RD DEFENDANT

ATTORNEY GENERAL.....4TH DEFENDANT

JUDGMENT

Joseph Ndegwa Kamau the Plaintiff seeks the following reliefs against Cleophas Maleka Richard, Ephantus Muriithi Mwaniki, District Land Registrar Kajiado and the Honourable the Attorney General, referred to as the first, second, third and fourth Defendants respectively in this judgment.

- i. A declaration that L.R. KAJIADO/KIPUTIEI-NORTH/20147 was fraudulently transferred by the first Defendant to the second Defendant assisted by the third Defendant and the transfer was null and void.
- ii. A declaration that the said land belongs to the Plaintiff.
- iii. An order compelling the first and second Defendants to transfer the suit land to the Plaintiff and in default the Executive Officer of the Court to sign all the transfer documents.

The Plaintiff's case is as follows. He was the registered proprietor of the suit land. He bought the land from one Mercy Nyambura of P.O. Box 10 Saba Saba on 17th April 2005 at Ksh. 44, 500/= . He was then issued with a title deed on 15/5/2013.

The Plaintiff lost his title deed through theft at his office. He then decided to conduct a search. He found out that the land had been registered in the name of the second Defendant.

Upon conducting investigations, the Plaintiff established that the first Defendant had purported to sell the Plaintiff's land to the second Defendant. The Plaintiff could not understand how his land could have been sold by the first Defendant yet he himself never sold it to the first Defendant or anyone else.

The third Defendant could also not explain how the Plaintiff's land could be transferred without the registered owner's consent.

On 20/4/2015, the Plaintiff issued a demand letter and notice of intention to sue to the first and second Defendants but they did not heed. Subsequently on 18th March, 2016 the Plaintiff filed this suit through counsel on record.

Only the third and fourth Defendants filed a written statement of defence dated 20th May, 2016. At paragraph 8 of the defence, the third Defendant states that he believed the documents presented to him for registration of the suit land to the second Defendant were genuine.

Further to the above, the third and fourth Defendants at paragraph 12 of the same defence aver that should they be found culpable for fraudulent dealing and registration, they would seek indemnity from the first and second Defendants under **Order 1 Rule 24 Civil Procedure Rules**.

The first and second Defendants did not enter appearance or file any defence after service of the summons to enter appearance. The suit proceeded against them ex- parte.

At the trial, the Plaintiff testified and produced the following exhibits;

- a. Sale Agreement between the Plaintiff and Mercy Nyambura.
- b. Letter of consent dated 13/8/2014 authorizing the transfer of land from Mercy Nyambura to the Plaintiff.
- c. Application for consent in above.
- d. Mutation form dated 9/5/2005.
- e. Copy of the register for the suit land.
- f. Copy of sale agreement between the Plaintiff and first Defendant dated 16th April, 2005
- g. Copy of Sale Agreement between the first and second Defendants dated 22nd January, 2015
- h. Copy of the Title Deed in the name of the second Defendant dated 28/1/2015.
- i. Copy of demand letter dated 20/4/2015.
- j. Copy of application for registration by the Plaintiff dated 31/3/2015.

When the case came up for defence hearing on 22/11/2021, the Defendant did not appear and the defence case was deemed as closed. No witness statement had been filed by any defence witness.

I have carefully considered the evidence adduced in this case by the Plaintiff as well as the defence filed on behalf of the third and fourth Defendants. I find that the following issues come up for determination;

1. Did the Plaintiff ever sell and transfer the suit land to the first Defendant?
2. Could the first Defendant lawfully transfer the land to the second Defendant?

On the first issue, I find that the Plaintiff did not sell or transfer the suit land to the first Defendant. A contract for sale of land must be in writing and signed by the purchaser and the vendor and witnessed by two witnesses, each witness for each party.

This is the requirement in **Section 3** of the **Law of Contract Act** and **Section 38** of the **Land Act**.

None of the Defendants has produced any evidence to prove that these mandatory provisions were complied with.

Section 6 of the Land Control Act makes it mandatory that all transfers of Agricultural Land be blessed with the consent of the Land Control Board of the area in which the land is situated. There is no evidence that such consent was obtained before the suit land was transferred from the Plaintiff to the first Defendant.

On the second issue, I find that the first Defendant could not lawfully transfer the suit land to the second Defendant because he did not own the land in the first place.

For the above reasons, I find that the Plaintiff has proved his case against the Defendants on a balance of probabilities both jointly and severally.

I make the following orders;

1. The third Defendant to restore the Plaintiff's ownership of the suit land in the most convenient manner as soon as possible.
2. The second Defendant or any other person claiming through him to be evicted from the suit, if they are in occupation.
3. Costs to the Plaintiff.

Order accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 17TH DAY OF JANUARY, 2022

M.N. GICHERU

JUDGE