



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT KAJIADO**

**ELC SUIT NO. 924 OF 2017**

**NATHAN KINYUA MAINA.....1<sup>ST</sup> PLAINTIFF**

**ELVIS MAINA MINJU.....2<sup>ND</sup> PLAINTIFF**

**DAVID MACHARIA MUCHIRI.....3<sup>RD</sup> PLAINTIFF**

**-VERSUS-**

**GEOFFREY KINYANJUI MUNGAI.....1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR KAJIADO.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

Nathan Kinyua Maina, Elvis Maina Minju and David Macharia Muchiri referred to in this judgment as the first, second and third Plaintiffs seek the following reliefs against the first and second Defendants Geoffrey Kinyanjui Mungai and the Land Registrar Kajiado both jointly and severally;

- (a) A declaration that the three Plaintiffs are the legal owners of L.R. KAJIADO/KITENGELA/3426.
- (b) An order cancelling entries numbers 4 – 6 in the land register in respect of L.R KAJIADO/KITENGELA/3426.
- (c) An order compelling the Registrar of Titles to rectify the register in respect of the suit land to reflect the three (3) Plaintiffs as the legal owners.
- (d) Costs and interest.

The Plaintiffs' case is as follows.

They are the lawfully registered owners of the suit land which they bought from Simon Kimani Njau on 13/11/1991. On 3/10/2013, the Plaintiffs carried out a search at Kajiado Land Registry and found out that the land had been transferred to the first defendant.

This was shocking to the Plaintiffs since they had not sold their land to him. They had not transferred it either. An inspection of the land register showed that there was an illegal entry on 17<sup>th</sup> December, 2010 in which the first Defendant got registered as the owner of the land and in the next entry, a title deed was issued in his name.

Upon complaining to the second Defendant, the Plaintiffs were advised that a new register would be opened after a Gazette Notice was published. Gazette Notice No. 15692 was published on 27<sup>th</sup> December, 2013 but the second Defendant could still not solve the problem. He advised that only a suit would solve the problem.

In support of their case, the Plaintiffs filed the following;

- (a) Their own witness statements
- (b) Copy of Title Deed for the suit land

(c) Copy of the register for the suit land

(d) Notice from the second Defendant to the Government Press dated 10/12/2013

(e) Copy of Gazette Notice No. 15692 dated 27/12/2013

(f) Letter by second Defendant dated 4/12/2013 written to the Plaintiffs.

The first Defendant, even after being served with the summons to enter appearance through substituted service did not enter appearance or file a defence.

The second Defendant filed a statement of defence dated 6<sup>th</sup> December, 2019 in which he states that the entries in the register were effected with the consent of all the relevant parties.

At the trial, only the Plaintiffs adduced evidence in terms of oral evidence and documents. No evidence either oral or documentary was adduced by or on behalf of the Defendants.

I have carefully considered all the evidence adduced by the Plaintiffs in this case. I have also considered the defence filed by the second Defendant. I find that the following issues arise;

(1) Did the Plaintiffs sell or transfer the suit land to the first Defendant?

(2) Does the first Defendant have good title to the suit land?

On the first issue, I find that the Plaintiffs did not sell or transfer the suit land to the first Defendant or to any other person.

A contract for sale of land must be in writing, signed by the vendor and the purchaser and each of the signatures witnessed by a witness. This is a mandatory requirement in **Section 3 of the Law of Contract Act** and **Section 38 of the Land Act**.

The second Defendant though with ample opportunity did not adduce any evidence of such an agreement between the parties. It was their defence that the parties consented to all the transactions.

**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 adduced by the second Defendant that such consent was obtained before the suit land was transferred from the Plaintiffs to the first Defendant.

On the second issue, I find that the first Defendant does not have good title to the suit land because his registration as the proprietor of the suit land is fraudulent.

For the above reasons, I find that the Plaintiffs have proved their case against the Defendants on a balance of probabilities.

I enter Judgment for the Plaintiffs against the Defendants jointly and severally as prayed for in the plaint.

Order accordingly.

**Dated Signed and Delivered Virtually at Kajiado this 17<sup>th</sup> day of January, 2022.**

**M.N. GICHERU**

**JUDGE**