



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**ELCC No. 124 OF 2013**

**PAULINE MUTHONI IKIGU.....PLAINTIFF**

**VERSUS**

**DOUGLAS KINYANJUI IKIGU .....1<sup>ST</sup> DEFENDANT**

**AYUB NJUGUNA MWAURA .....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. Proceedings in this matter commenced when the plaintiff filed plaint dated 21<sup>st</sup> October, 2010 which was filed in the High Court. The matter was later transferred to this court. The plaint underwent several amendments resting with Further Amended Plaint filed on 18<sup>th</sup> January 2013. The case concerns the parcel of land known as Gilgil/Karunga block 9/1606 (Ol Burgel), hereinafter the 'suit property'.

2. The plaintiff described the first defendant as her step son and the second defendant as an official of Rumuruti Farmers Company Limited. She averred that she was a shareholder of Rumuruti Farmers Company Limited and was allocated the suit property around the year 1989. That the first defendant was issued with a title deed in respect of the suit property fraudulently and unlawfully in collusion with the second defendant. That later in June 2012 during the pendency of this suit, the first defendant illegally and fraudulently transferred the suit property to the second defendant. Among the particulars of fraud include causing the transfer of the suit property without the plaintiff's authority and through misrepresentations as to who was the true allottee, obtaining title to the suit property without any consideration, using forged documents to effect the transfer, obtaining title to the suit property without being a shareholder of Rumuruti Farmers Company Limited and causing transfer to the second defendant notwithstanding this suit.

3. The Plaintiff therefore prayed for Judgment against the defendants jointly and severally for: -

*(a) A temporary injunction and or inhibition restraining the 2<sup>nd</sup> Defendant either by himself, his agents, servants and or anyone claiming through him from selling, transferring, disposing and or dealing adversely with the suit land herein known as **GILGIL/KARUNGA BLOCK 9/1606** pending the hearing and determination of this suit.*

*(b) A declaration that the Plaintiff is the lawful owner of all that piece of land known as **GILGIL/KARUNGA BLOCK 9/1606** suitland herein and the Defendants has have (sic) no legal right to deal with the Suitland and consequently the title deed issued to him the Defendant (sic) be cancelled forthwith.*

*Alternatively;*

*(c) An order that the Defendant Defendants (sic) do compensate the Plaintiff with an amount equal to the current market value for the suitland herein.*

*(d)*

*(e) Any other or further relief that this honourable court may deem fit.*

4. The defendants denied the plaintiff's averments and urged the court to dismiss the suit.

5. At the hearing, the Plaintiff testified as PW1. She stated that she resides in Solai and she is a farmer. She stated that the first defendant is her step son who was born to her late husband and his first wife. That she also has a son named Douglas Kinyanjui Ikegu, just like the first defendant. That she became a member of Rumuruti Farmers' Company on 2<sup>nd</sup> August 1987 by paying KShs 200 being entrance fee. She applied for three shares at KShs 3,000 each, paid KShs 9,000 for the three shares and was issued with a receipt for KShs 3,000 and another for KShs 6,000. Both receipts were dated 2<sup>nd</sup> August 1987. She was told to wait and one year later, she went back and paid KShs 850 for

survey. She balloted, got the number 134 and was immediately shown her plot. She added that one share was equivalent to 1 acre but since there were more members than available plots, she was allocated 1 acre and three quarters. She fenced the plot and constructed a two-room house. She however did not live on the plot but asked her neighbour on the next plot to watch over it.

6. The plaintiff went on to testify that later on she went to see the second defendant who told her that the plot had been registered in the name of the first defendant and that it was given to the first defendant since he claimed that he inherited it from the plaintiff's late husband. She added that she later went to the land registry and upon finding that the plot was registered in the names of the defendants, she lodged a caution against it. That her late husband neither had a plot nor a share in Rumuruti Farmers Company. That a petition for letters of administration in respect of her late husband's estate was filed by the children of the first wife without involving her and that the said children shared the estate without involving her. That she disagreed with the family and returned to her parents' home before the deceased passed away and that she remained at her parents' home even as at the date of her testimony. She added that she did not have any share certificate issued to her by Rumuruti Farmers Co. Ltd or the member's register in respect of the company.

7. Next to testify was Douglas Kinyajui Ikigu, the plaintiff's son. He stated that in the year 2009 he accompanied the plaintiff to the office of the second defendant at Gilgil Town and the second defendant told them that the first defendant was the owner of the suit property. That the second defendant gave them a copy of the title and that they later conducted a search on 3<sup>rd</sup> September 2010 which confirmed that the first defendant was the owner of the suit property. That they subsequently lodged a caution on 8<sup>th</sup> September 2010 and did another search on 10<sup>th</sup> August 2012 which showed that the owner of the suit property was the second defendant.

8. The plaintiff's case was then closed.

9. The defendant testified as the sole defence witness. He stated that he met the first defendant in Gilgil and got interested in a plot that the first defendant was selling. He obtained certificate of search dated 30<sup>th</sup> April 2012 which showed that the first defendant became registered owner on 22<sup>nd</sup> August 2008 and was issued with title on 9<sup>th</sup> February 2009. That he then inspected the plot on the ground and found it vacant without any development. They then executed a sale agreement dated 7<sup>th</sup> May 2012 with a purchase price of KShs 180,000. That the suit property was transferred to him and a title deed was then issued in his name on 21<sup>st</sup> June 2012. He added that upon purchasing the suit property, he started cultivating on it and continued to do so even as at the date of his testimony. That the suit property was initially owned by Rumuruti Farmers Company and that he was the secretary of the said company from 1997 to 2004. He urged the court to dismiss the suit with costs.

10. The Defence case was closed. Parties then filed and exchanged written submissions. I have considered the pleadings, evidence and submissions. The issues that arise for determination are whether the plaintiff is the owner of the suit property and whether the reliefs sought should issue.

11. The plaintiff's case is that the defendants acquired the suit property fraudulently. Fraud is a serious allegation which beyond being pleaded and particularised, must be strictly proven. See **Kuria Kiarie & 2 others v Sammy Magera [2018] eKLR**. The burden of proof facing a party alleging fraud is higher than the usual one in civil cases of proof on a balance of probabilities but lower than the criminal law standard of proof beyond reasonable doubt. See **John Mbogua Getao v Simon Parkoyiet Mokare & 4 others [2017] eKLR**.

12. The plaintiff contends that that she acquired the suit property by virtue of being a member and shareholder of Rumuruti Farmers' Company. She relied on receipts in a bid to demonstrate membership and shareholding in the company. She did not call any witness from the company to support her claims of being a member of the company. The members register of the company was not produced.

13. The plaintiff contended that she held three shares in the company and that pursuant to those shares, she participated in a balloting exercise in which the company allocated her the suit property. Once again, she did not call witness from the company to produce records regarding shareholding in the company and the results of the balloting exercise. Although she produced what she called a ballot card, I note that the space provide in the said card for plot number is blank. While the ballot has a serial number 134, there is need for evidence from the company to confirm that the balloting exercise resulted in the plaintiff being allocated plot number 134 and that plot number 134 ultimately became Gilgil/Karunga Block 9/1606 (Ol Burgel), which is the suit property herein.

14. In view of the foregoing discourse, the plaintiff has not persuaded me that she has any right to ownership of the suit property. Her allegations of fraud have not been proven to the required standard. That being the case, it follows that the reliefs sought are not available to the plaintiff.

15. In the result, I dismiss the plaintiff's case. Considering the relationship between the parties, I order that each party bears own costs.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 28TH DAY OF FEBRUARY 2022.**

**D. O. OHUNGO**

**JUDGE**

**DELIVERED THROUGH ELECTRONIC MAIL IN THE PRESENCE OF:**

**COURT ASSISTANT: E. JUMA**