



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

LAND CASE NO. 10 OF 2021

FREDRICK MUNGAI NGARURO.....PLAINTIFF

VERSUS

KENNETH ROB.....1ST DEFENDANT

THE LAND REGISTRAR, NAKURU 2ND DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....3RD DEFENDANT

JUDGMENT

1. In his plaint dated 3/2/2021 and filed on 4/2/2021 the plaintiff seeks the following orders:

- a) A Declaration that the Plaintiff, Fredrick Mungai Ngaruro is the lawful and legally registered proprietors of Title Number Kiambogo/Kiambogo Block 2/110.
- b) An order compelling the 2nd Defendant to cancel any parallel entries at the Land Register that do not reflect Fredrick Mungai Ngaruro as the legal registered proprietor of Kiambogo/Kiambogo Block 2/110.
- c) A permanent injunction restraining the 1st Defendant, his servants, workmen and agents, from entering on the Plaintiff's said property, or from erecting or causing to be erected any constructions thereon, from transferring, disposing off, alienating, wasting or from in any way interfering with the Plaintiff's use and enjoyment of Title Number Kiambogo/Kiambogo Block 2/110.
- d) Costs of this suit.
- e) Interest thereon.
- f) Any other relief to the court deems fit to grant.

2. The 2nd and 3rd defendants filed their statement of defence dated 2/3/2021 but the 1st defendant failed to respond to the suit in any manner. At the hearing only the plaintiff testified in his case; none of the defendants appeared at the hearing and the suit therefore proceeded in their absence.

3. According to the plaint and the plaintiff's evidence the plaintiff purchased the suit land known as **Title Number Kiambogo/Kiambogo Block 2/110** from one **Joshua Ndungu Kingori** who was a member of Mwariki Farm Ltd and he was issued with a title deed over the suit land which measured **4.24 Ha** on **16/9/1994**. Since then the plaintiff, who had allegedly first occupied the suit land in **1984**, has been in possession of the suit land and he has extensively developed it. However after he applied for a certificate of official search at the lands registry in Nakuru on **5/1/2021**, he discovered that the land register reflected that the 1st defendant was the registered proprietor of the suit land. The plaintiff avers that the 2nd defendant is guilty of fraud for allegedly having altered the land records for the suit land to reflect the 1st defendant as the owner of the land; in addition the 2nd defendant is alleged to have refrained from issuing the plaintiff with a signed certificate of official search in respect of the suit land.

4. The plaintiff adopted his written witness statement dated **3/2/2021**. His evidence is that title to the suit land was issued in his name. He produced the original title in court. The plaintiff in giving his evidence a letter (**PExh 9**) dated **29/9/1986** which appears to notify the plaintiff of the need to attend site and be shown beacons to the suit land. That letter also suggests that the former number of the suit land was **112** but had been changed to **110**. The plaintiff produced evidence showing that in **2013** the school he has built on the suit was registered by the government. Photographic evidence of the school buildings was also produced at the hearing.

5. The defendants never appeared at the hearing and this court, not satisfied with the evidence on record issued a *suo motu* summons to the Land Registrar, Nakuru who appeared and testified before it on **10/2/2022** while represented by Ms Shirika. His evidence is that the green card for the suit land is not available at the land registry; that the register of members of Mwariki Farm Company Ltd is available in the registry, a certified copy of which he produced in court and which showed that the plaintiff's name against serial number **109** and his entitlement as **plot No 110**. Upon cross-examination by Mr. Njoroge for the plaintiff he stated that he would not know whether the green card or land register for the suit land had ever been opened. He also stated that he is able to reconstruct the land register in the event an application to that effect is made by the plaintiff.

6. From the evidence analyzed above, this court is persuaded that the plaintiff purchased the suit land from a shareholder in Mwariki Farm Ltd as alleged. In its view the plaintiff has been in occupation of the suit land for a lengthy period of time. As stated earlier, the 1st defendant never appeared to defend himself against the allegations by the plaintiff. The original title document issued in the name of the plaintiff was shown to the court. It is in the name of the plaintiff. **Section 26 of the Land Registration Act** states as follows:

26. (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

7. From a perusal of the pleadings and the evidence in this suit, this court is of the opinion that the plaintiff has established on a balance of probabilities that he had been registered as the owner of the suit land and that he had been issued with a title deed. There were irregularities in the registration of the land in the name of the 1st defendant and that the defendants have failed to adduce evidence to explain the irregularities. The 2nd defendant is the custodian of the land records regarding the suit land whereas the 1st defendant, being the person now named as proprietor in the register, appears to be the only person who could have had had interest in the registration of the land in his name. The 2nd and 3rd defendants have not indicated in their defence that the registration of the 1st defendant was a mistake. As regards the 2nd and 3rd defendants I find that their defence is not supported by any evidence. The statements therein were not proved.

8. The upshot of the foregoing is that I find that the plaintiff has established his claim against all the defendants on a balance of probabilities and I hereby enter judgment in his favour against the defendants and I issue the following final orders:

a) A Declaration is hereby issued declaring that the Plaintiff, Fredrick Mungai Ngaruro is the lawful proprietor of Title Number Kiambogo/Kiambogo Block 2/110.

b) The Land Registrar Nakuru shall cancel any entries in the Land Register that reflect KENNETH ROB as the registered proprietor of Kiambogo/Kiambogo Block 2/110, and reinstate or register the plaintiff FREDRICK MUNGAI NGARURO as the registered proprietor of the suit land.

c) A permanent injunction is hereby issued restraining the 1st Defendant, his servants, workmen and agents, from entering on the Plaintiff's said property, or from erecting or causing to be erected any constructions thereon, from transferring, disposing off, alienating, wasting or from in any way interfering with the Plaintiff's use and enjoyment of Title Number Kiambogo/Kiambogo Block 2/110.

d) Each party herein shall bear their own costs of this suit.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 17TH DAY OF FEBRUARY, 2022.

MWANGI NJOROGE

JUDGE, ELC, NAKURU