



## REPUBLIC OF KENYA

### IN THE ENVIRONMENT AND LAND COURT AT KITALE

#### LAND CASE NO. 1 OF 2012

**GEORGE KAMAU KIMANI ..... 1ST PLAINTIFF**

**JAMES MUCHOKI KIMANI .....2ND PLAINTIFF**

**VERSUS**

**DAVID KILI SAWE..... 1ST DEFENDANT**

**GEORGE WASHINGTON MOSES THUKU .....2ND DEFENDANT**

## J U D G M E N T

### INTRODUCTION

1. The second defendant **George Washington Moses Thuku** is the registered owner of **LR. No. Waitaluk/Kapkoi Block 4/Waitaluk/166** (suit land). The two plaintiffs are brothers and administrators of the estate of their late father **Geoffrey Kimani Muchori** (deceased) who died on **26/4/2000**. The first defendant was the owner of a large parcel of land which was later subdivided resulting into the suit land. The plaintiffs brought this suit against the defendants seeking for a declaration that the registration of the suit land in the name of the second defendant is null and void and that the Registrar do deregister the name of the second defendant and have the names of the plaintiffs registered in place thereof or in the alternative the second defendant be ordered to sign transfer forms in favour of the plaintiffs.

### PLAINTIFFS CASE

2. The first plaintiff testified that he is one of the administrators of the estate of the deceased. In the year 1999 the deceased approached the first defendant and agreed with him that he was to purchase 5 acres from him. The deceased started paying for the five acres by installments. As at the time the deceased died, he had paid for four acres. After the deceased died, the first plaintiff paid for the fifth acre. The first plaintiff testified that the deceased took possession of the five acres in 2000 and started cultivating it. After the deceased died, his brother is the one who used to cultivate it. He later learnt that the five acres had been registered in the name of the second defendant. This is the time he commenced this suit against the defendant. He contends that the two defendants colluded and had the second defendant registered as owner of the suit land.

### DEFENDANTS CASE

3. The second defendant testified that he is a cousin of the deceased. The deceased had employed him as his farm manager. He worked for the deceased for over 34 years. In the year 1999 the deceased asked him to look for land so that he would buy it for him. The second defendant went to the home of the first defendant who had land to sell. The second defendant went back and told the deceased that he had found a seller. The deceased accompanied him to the home of the first defendant whereby an agreement was reached that the deceased was to purchase 5 acres but payment was to be by installments. The second defendant had been employed by the deceased from 1978.

4. The first defendant testified that as at the time the deceased died, he had paid for 4 acres. He approached the first plaintiff on the way forwarded. The first plaintiff completed paying for the fifty acre. After a short while, he again approached the first plaintiff and asked him to tell the second defendant to go to him so that he could take him before the land control board alongside another person who had bought land from him. The first plaintiff delayed in bringing the second defendant. He then decided to call the second defendant who came and he took him before the land control board where consent to subdivide was given. The second defendant processed and obtained title and took possession of his five acres. He denied that he colluded with the second defendant to have him registered as owner of the suit land.

### **ANALYSIS OF EVIDENCE**

5. I have carefully gone through the evidence adduced herein as well as the submissions filed by counsel for the parties. The plaintiffs are indeed the administrators of the estate of the deceased. Letters of Administration were issued to them on 28/10/2011 [see exhibit 1]. As per exhibit 2(a) the first defendant initially sold 2 acres to the deceased on 18/1/1999. The deceased completed paying for the two acres on 16/2/1999. On 29/1/2000 the first defendant sold one more acre to the deceased. Again on 20/3/2000 he sold one more acre to the deceased making the total acreage to be four. The deceased died a month later. On 17/7/2000 after the demise of the deceased, his son the first plaintiff paid for the fifty acre. He paid Kshs.20,000/= on 17/7/2000. The rest of the money was paid by installment until completion. The first plaintiff produced three petty cash vouchers which were used to pay a total of Kshs.70,000/= to the first defendant. This was payment for the fifty acre which payment was made after the death of the deceased.

### **ISSUES FOR DETERMINATION**

6. The plaintiffs are contending that the deceased bought the five acres for himself. The second defendant on the other hand contends that the five acres were bought for him by the deceased. Now the issue which emerges for determination is whether the five acres were for the deceased or were meant for the second defendant and whether the registration of the five acres in the name of the second defendant was fraudulent. The first plaintiff does not deny that the second defendant was related to the deceased and that he was the manager of the deceased since 1978. The second defendant testified that it is the deceased who asked him to look for land so that he can buy for him. The second defendant found land from the first defendant. The first defendant took the deceased to the home of the first defendant where a deal was struck to purchase five acres but payment was to be by installments. The evidence of the second defendant is corroborated by that of the first defendant. When the deceased died, the first defendant approached his son the first plaintiff on what to do with the remaining one acre which had not been paid for. The first plaintiff told him that he was willing to do as per the wishes of his father. The wishes of his father were that he was to buy the land for his long serving manager who was also a relative. According to documents produced, the last payment was made on 25/9/2000.

7. There is evidence that the first defendant approached the first plaintiff and asked him to avail the second defendant so that he could take him before the land control board. The first plaintiff asked him to delay going to the land control board. Since the first defendant had another person to whom he had sold land, he decided to call the second defendant whom he took to the land control board together with the other purchaser. I find the evidence of both the first and second defendant to be credible and truthful. The first defendant's evidence is supported by the extract of titles filed by the plaintiffs in their list of documents. The documents show that the suit land is a subdivision of a main title alongside two other titles.

**8.** The second defendant obtained his title on 17/2/2011. The first plaintiff's claim that the deceased was buying the suit land for the family is an afterthought. He knew that his father was buying the land for his long serving manager and relative. The deceased did this towards his last days. He started the process in 1999 and died one year later after paying for four acres. His son the first plaintiff completed payment for the fifth acre as per the wishes of his late father. He cannot turn round and seek to take away the land from the second defendant. There was no fraud committed by either the first or the second defendant.

### **DECISION**

**10.** The plaintiffs have failed to prove that the second defendant had the suit land registered in his name fraudulently. There was no collusion between the defendants. The plaintiffs claim therefore fails. The same is hereby dismissed with costs to the defendants.

Dated, signed and delivered at Kitale on this **22nd** day of **June, 2015**.

**E. OBAGA**

**JUDGE**

**COURT**

Judgment delivered in open court at 10.15 am in the absence of parties who were aware of the date of delivery.

Court clerk Isabellah.

**E. OBAGA**

**JUDGE**

**22/6/2011**