



NO. 15/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

ELC CASE NO.7 OF 2014

ELIAS NDWIGA NJOKA..... APPLICANT/PLAINTIFF

VERSUS

DISTRICT LAND REGISTRAR, KAJIADO.....1ST DEFENDANT/RESPONDENT

ELIUD NGUNGU MUGAMBI 2ND DEFENDANT/RESPONDENT

JUDGMENT

1. The Plaintiff/Applicant's claim is set out in the Amended Originating Summons amended on the 6th May 2004 vide paragraphs:-
 1. That the Applicant/Plaintiff is the owner/proprietor of Parcel No. **Kajiado/Kisaju/121** on the register and his name is and has been on register and should remain so.
 2. That the Registrar, the 1st Defendant/Respondent by himself or his agent do file the register of the said land as it should be without unsolicited remarks on the register.
 3. That the name **Eliud Ndungu Mugambi** inserted on the register be removed and/or cancelled from the register.
 4. That costs of this application be cost in the cause.
2. The same claim is supported by the grounds on the face of the Amended Originating Summons namely:
 1. That the subject land is now registered in the name of **Eliud Ndungu Mugambi**, a person not known to the Applicant.
 2. That the Applicant got the land from his grandmother who belonged to a group of women who had invested in the land.
 3. That there has been interference with the particulars of registration by the office of the Registrar.
 4. That the Registrar has removed the register from the binder and placed unsolicited remarks on the register, and also supported by his Affidavit sworn on 6th May 2014.
3. The pleadings were served upon Respondents via advertisement in the local dailies as per the court order on record dated 20th May 2014.
4. The Plaintiff proceeded exparte since no Defence or appearance was entered.
5. The matter was formally proved on the 13th October 2014 when the Plaintiff testified and closed his case.

6. It is the Plaintiff's case that he was the registered owner of **Kajiado/Kisaju/121** up to 7th October 1998 but on the 16th December 1999, the land was transferred into the names of **Eliud Ndungu Mugambi**, 2nd Defendant herein.
7. The Plaintiff depones that he got the land from his late grandmother who belonged to a group of women who invested in buying lands.
8. He avers that up to 13th September 2012, he was registered owner of the subject herein and supports the averment by an exhibit No. PEX1 Search Certificate.
9. However, on 16th January 2014, he applied for a certified copy of register and the same showed the registered owner of the subject matter to be **Eliud Ndungu Mugambi** who he depones to have never known or transacted with him on the subject herein.
10. The Plaintiff states that the register has been persistently interfered with on the part of the entries and finally his name removed from the register and the register removed from the binder.
11. He accuses the Registrar of Lands, the 1st Defendant and the 2nd Defendant of collusion with a desire to deprive him his land subject herein.
12. The green card produced PExh No. 3 shows clear entries which clearly contradict the searches done, PExh1 in that whereas on 13th September 2012, the Plaintiff was registered owner of the land, the green card indicates that the Plaintiff's land was transferred to the 2nd Defendant on 6th December 1999. The Plaintiff still holds the original title deed issued on 7th October 1998, PExhibit No. 3.
13. Despite service, the Defendants never filed appearance or Defence.

Issues for determination:

1. Whether the court should issue an order to cancel the register to remove 2nd Defendant and replace it with the Plaintiff's name?
2. What is the order as to costs?

14. **Section 80** of the **Land Registration Act 2012** is to the effect that;

Section 80 (1) subject to Subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

Subsection 2 is an exception to a case of bona fide purchase for value.

15. The search of 13th September 2012 shows that the Plaintiff who still holds the original title was the registered owner as by that date of the official search.
 16. The green card supplied thereafter shows that the 2nd Defendant got himself registered as the owner on 16th December 1999. This alleged owner has never entered the land, occupied, used or developed the same and he is nowhere to be seen. The service had to be served via advertisements in the local dailies.
 17. The 1st Defendant who is in custody of the register was also served with the summons but failed to reply or appear in court to explain how the Plaintiff's name was removed from the register and the 2nd Defendant's name entered in the register.
 18. On the face of it, the court holds that a case of fraud is established and holds that the Plaintiff's claim has merit. The court thus makes the following orders:-
1. The entry in register of **Kajiado/Kisaju/121** showing **Eliud Ndungu Mugambi** as the owner be and is hereby cancelled and the name of **Elias Ndwiga Njoka** be entered forthwith.
 2. The 1st Defendant to effect the change in No.1 above without any delay.
 3. The costs of the suit awarded to the Plaintiff.

DATED, SIGNED and DELIVERED at MACHAKOS this 21ST day of October, 2014.

CHARLES KARIUKI

JUDGE