



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

HIGH COURT

CIVIL SUIT NO. 31 OF 2006

JANE WANGECI KARIUKI.....PLAINTIFF

VS

GRACE RUGURU THUMBI & ANOTHERDEFENDANTS

JUDGMENT

The plaintiff by plaint dated 2/6/2006 and filed on 13/6/2006 claims that on or about 6/12/1999, he bought from 2nd defendant Land parcel No. MWEIGA/BLOCK 2/IKUMARI/612 for Kshs.150,000/- and duly paid for the same. The said transaction was sanctioned by the letter of consent from Kieni West Land Control Board on 7/12/199. At all material times to this suit, the 1st defendant was the wife of the 2nd defendant. In spite of the intentions of the plaintiff and 2nd defendant to have the transfer executed for the aforementioned parcel, the same wouldn't take effect owing to a difference in the names of the defendant as contained in the identity card vis a vis the Title Deed. The plaintiff has at all material times been in possession of the parcel, which she has extensively developed.

Unknown to the plaintiff, the 1st and 2nd defendants were engaged in a dispute over the same parcel of land in the Kieni West Land Dispute Tribunal. The plaintiff contends that the 1st defendant knew and was aware of her interest therein yet she was never made a party to the said tribunal case.

On or about 4.2.2001, the 1st defendant moved to the Chief Magistrate's Court Nyeri vide Nyeri CMCC Award NO. 2 of 2002 to effect the award of the 28.12.2001 from the Tribunal as a Judgment of the court which was adopted on 7/3/2002 and the 1st defendant had the parcel transferred into her name by a form of transfer dated 18/8/2003.

The plaintiff contends that the 1st defendant having known and acknowledged the sale and consent with the 2nd defendant owed the plaintiff by way of constructive Trust a duty even upon execution of the transfer and further contends that in the alternative that the 1st defendant's transactions were null and void in view of the transaction between the plaintiff and 2nd defendant. The plaintiff complains that the 1st defendant has turned to acts of waste of encroachment of the parcel of land and keeps threatening the plaintiff with demolition of the development. The plaintiff thus claims an order of injunction restraining the 1st defendant encroachment or threats in respect of the suitland and a determination of the said trust plus cancellation of title to Mweiga/Block 2/Ikumari/612. In spite of notice having been given and intention to sue, the defendants have failed, refused and or neglected to make good the plaintiff's claim against them hence rendering this cause of action necessary.

The plaintiff prays for the reliefs that there be an injunction restraining the 1st defendant from encroaching or in any way trespassing parcel No. Mweiga/block 2 Ikumari/612 and an order canceling the

transfer in favour of 1st defendant and rectification register. Determination of the constructive trust and or alternative the refund of purchase price. Plus Costs and interest.

The matter came for hearing on 3/12/2013. The defendants were served but did not attend. The plaintiff adopted the statement dated 25/4/2013 as his evidence in chief. She states that she *knows the 1st and 2nd defendant in this matter. It was on or around the year 1998, he purchased a piece of land from one Antony Thumbi Mathu. Two persons witnessed the transaction and they are Thumbi Muchiri and Josiah Nderitu. Thereafter, on 7.12.1999 they proceeded to seek the consent of Kieni West Land Control Board. However, it was noted that there was a problem in the names of the seller as appearing in his identity card as against the names appearing in the original title deed to the land Mweiga Block 2/Ikumari/612. The seller therefore endeavored to obtain and actually obtained consent to correct the names so that they could correspond accordingly. Thereafter the seller executed a transfer of land in the plaintiff's favour.*

She tried to register the transfer but unfortunately she could not as the seller was unable to furnish her with the original title deed which he alleged was with his wife the 1st defendant in this matter. The plaintiff was never the less allowed possession which she took over immediately and built some semi permanent structures and cultivated food crops on the said parcel of land.

After occupation of the land for about 5 years one Grace Thumbi appeared from nowhere and entered into the said land where the plaintiff had planted wheat and started to till it. A dispute ensued and the plaintiff proceeded to report to the D.O Kieni West division who heard the issue and directed 1st Defendant not to cultivate the said land but she did not hearken to the directive.

The plaintiff was later to learn that the two defendants had later lodged a dispute in the Kieni West Division Land Dispute Tribunal which culminated in the award case no. 17 of 2001. Fortunately the said award was not effected and therefore the plaintiff brought this case to this court to determine that the plaintiff is a purchaser for value of the suit parcel. The plaintiff prays that the 2nd defendant should be restrained from further interference. She is also seeking specific performance that this land should be registered in her name.

She produced the application for the consent of the Land Control Board dated 7/12/1999, the letter of consent dated 7/12/1999, an application to correct name in the register, copies of proceedings of the Land Disputes Tribunal Mweiga, the order of the Chief Magistrate court dated 8/3/2002, the demand letter and reply thereto, the certificate of official search and transfer to prove her case.

I have considered the evidence on record and do find that the 2nd defendant was the registered proprietor of parcel of land NO. MWEIGA/BLOCK 2/IKUMARI/612 measuring 0.2226 Ha.

In the year 1998 the plaintiff purchased the land from the 2nd Defendant. On 7/12/1999 he sought and obtained consent from the Kieni West Land Control Board to transfer the land from the 2nd defendant to herself. The name of the 2nd defendant name was corrected to read Antony Thumbi Mathiu and thereafter executed a transfer of Land in the plaintiff's favour. She took possession of the land but could not register the transfer as the original title was not surrendered. She has lived on the parcel of land and even built some semi permanent structures.

The plaintiff later learnt that the defendants had lodged a dispute in the Kieni West Land Dispute Tribunal and an award made in the 1st Defendants favour without the plaintiffs knowledge. The plaintiff seeks an injunctive order restraining the 1st defendant from encroaching or in any way trespassing on parcel of land no. MWEIGA/BLOCK 2/IKUMARI/612 and an order canceling the transfer in favour of the 1st defendant and rectification of the register inter alia.

This court finds that the process of acquisition of the disputed land by the 1st defendant from the 2nd defendant was tainted with illegality as the dispute between the two was not on dispute contemplated by section 3 of the Land Dispute Tribunal Act no 18 of 1990 and therefore the decision of the Tribunal was nullity and nothing comes from nullities. Moreover, the matter proceeded when the plaintiff was in actual possession and use and therefore ought to have been accorded a hearing.

The upshot of the above is that the Land Registrar Nyeri county is hereby ordered to rectify the register for No. MWEIGA/BLOCK 2/IKUMARI/612 to read the name of the 2nd defendant thus ANTONY THUMBI MATHU. The transfer executed by the plaintiff and the 2nd Defendant, Anthony Thumbi Mathu to be registered forthwith in favour of the plaintiff.

DATED AND DELIVERED AT NYERI THIS 11TH DAY OF DECEMBER 2014

ANTONY OMBWAYO

JUDGE