



REPUBLIC OF KENYA



**Ngunyangi & another v Registrar of Titles (Environment & Land Case E167 of 2020) [2022] KEELC 3678 (KLR) (31 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3678 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E167 OF 2020**

**EK WABWOTO, J**

**MAY 31, 2022**

**BETWEEN**

**TIMOTHY GACHANJA NGUNYANGI ..... 1<sup>ST</sup> PLAINTIFF**

**BEATRICE NJERI GACHANJA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**REGISTRAR OF TITLES ..... DEFENDANT**

**RULING**

1. The plaintiffs Timothy Gachanja and Beatrice Njeri Gachanja initiated this suit through a Plaint dated June 17, 2020. They sought the following reliefs:-
  - a) A declaration that the plaintiffs are the legal owners of Land Reference Number 209/12221/369.
  - b) An order compelling the defendant to register Land Reference Number 209/12221/369 in the names of the plaintiff herein.
  - c) Costs of the suit with interest at court rates.
  - d) Any other relief this Honourable court shall deem just and fit.
2. Prior to filing of this suit the plaintiff had sought leave vide an order issued on February 10, 2021 by Lady Justice K Bor to file the suit out of time.
3. The defendant filed a statement of defence dated April 26, 2021. In the defence, the defendant denied the contents of the Plaint and stated that there was not proof that the plaintiff had booked the original documents for registration at the defendants offices and further if at all the original title was missing as alleged by the plaintiff then the owner needed to apply for a provisional certificate of title to enable the registration to be effected. The defendant did not call any witness but filed written submissions.



4. The plaintiffs case is contained in the Plaint dated June 17, 2020, the witness statement by the 1<sup>st</sup> plaintiff Timothy Gachanja Ngunyagi, the oral evidence tendered in court on February 10, 2022 and the written submissions dated April 13, 2022 filed by Ms Auta Nyakundi & Co Advocates.
5. The plaintiff case is that they are the beneficial owners of all that property known as Land Reference Number 209/12221/369 pursuant to a sale agreement dated January 21, 2004.
6. The plaintiff contends that they purchased the said land from one Phoebe Achieng Awino who had won the property through a raffle organized by the East African Standard Newspaper and who had not had the property transferred in her name but was responsible in ensuring that a transfer to the plaintiffs was executed by the registered owner's M/s Closet Investment Limited.
7. The plaintiffs further contends that the transfer was executed and lodged at the land's office for registration and the plaintiffs paid stamp duty on June 15, 2004. The plaintiff adds that all the original documents together with the original title deed were lodged at the lands registry but the transfer was never registered and upon enquiry the plaintiffs were informed that the original documents could not be traced at the land's office.
8. It is the plaintiffs case that all efforts in following up with the defendant with a view of tracing the said documents have been futile. It was also the plaintiffs case that they are in actual possession of the suit property wherein they reside.
9. The case of the defendant is contained in statement of defence dated April 26, 2021 and written submissions dated April 27, 2022.
10. In summary the defendants case is that there is no proof that the plaintiffs original documents were ever booked for registration at the defendant offices. The defendant contends that the original owner ought to have applied for a provisional certificate of title to enable registration to be effected.
11. During the hearing of the case on February 10, 2022, the 1<sup>st</sup> plaintiff Timothy Gachanja Ngunyagi testified a PW1 and also testified on behalf of the 2<sup>nd</sup> plaintiff. He adopted his witness statement as part of his evidence in chief. He also produced the 7 documents contained in the plaintiffs bundle of documents dated June 17, 2020. He stated that the original documents which included the original title deed and original transfer documents were lodged at the defendants offices for processing. He further added that he had also presented the clearance certificates and land rates and rent which was also deposited together with a copy of the sale agreement. It was his evidence that he was issued with receipts confirming that indeed the documents were lodged with the Defendant.
12. It was the plaintiffs testimony that after lodging the said documents he was told to wait after sometime when the transaction would be finalized and documents processed. However, this took long and on following up, he was informed that the documents could not be traced. He later issued the defendant with several letters from his buyers which also included a demand letter of their intention to sue and he produced the same as part of his evidence. The same were produced as P EX4.
13. In cross examination by Ms Mwalizi learned counsel on behalf of the defendant , he stated the following; that he did not have a copy of the transfer , the purchase price was kshs 3,500,000/= which was paid through his Advocates in 2004 and that the land was never registered in their names since the documents were never traced.
14. He also stated in cross examination that he had not sued Phoebe Achieng Awino, the original owner because he had no case against her since the documents were lost when they were deposited at the Defendant's offices.



15. In re-examination by his Advocate Ms Kalulu learned counsel, he stated that he had been in occupation of the property for over 18 years and added that he had surrendered all the original documents at the defendant's offices for processing. He further stated that he could not have been requested to pay for stamp duty had he not have submitted the said documents.
16. During the hearing, the defendant never called any witness to testify and they closed their case but filed written submissions.
17. The plaintiffs filed their written submissions dated April 13, 2022 through the law firm of M/S Auta Nyakundi & Co Advocates. Counsel for the plaintiffS identified three issues for determination by the court;
  - i. Whether the plaintiffs are the original owners of L R no 209/12221/369.
  - ii. Whether the plaintiffs surrendered original documents of title L R no 209/12221/369 and the transfer to the defendant for registration.
  - iii. Who bears the costs.
18. Counsel submitted that the plaintiffs entered into an agreement dated January 21, 2004 with Phoebe Achieng Awino for the purchase of the suit property upon which they paid a sum of ksh 3,400,000/- as purchase price. It was further submitted that the initial registered owner of the suit property was Clozet Investment Limited who had willfully surrendered the title to Phoebe Achieng Awino who later sold to the plaintiffs. Counsel referred to article 40 of the [Constitution](#) and section 65 of the [Land Registration Act](#) and submitted that the defendant ought not to interfere with the Plaintiffs' rights to property but rather execute its responsibility as provided for by the law.
19. On whether the plaintiffs surrendered original documents of title L R no 209/12221/369 and the transfer to the defendant for registration, Counsel submitted that they was indeed sufficient documentary evidence which were produced in form of receipts dated May 14, 2004 and June 15, 2004 as proof that indeed their documents were deposited to the defendant for processing. Counsel added that the defendant had an opportunity to adduce any contrary evidence which was not adduced and in the absence of the same, the said position remained unchallenged.
20. On costs, it was argued that the same should be born by the defendant who were liable herein.
21. The defendant filed written submissions dated April 27, 2022. It was submitted that the plaintiff had failed to discharge their burden of proof as is stipulated under sections 109 and 112 of the [Evidence Act](#) cap 80 of the Laws of Kenya and reference was made to the case of [Mbutbia Macharia v Annah Mutua Ndwiga & Another](#) [2017] eKLR.
22. It was argued that even though the plaintiffs documents had been misplaced and or lost, they had ought to have complied with the applicable provisions of regulation 27 of the [Land Registration \(General\) Regulations, 2017](#) and section 33 of the [Land Registration Act](#) and reference was also made to the case of [Kenya Commercial Bank Ltd vs Alcon Holdings Limited](#) [2021] eKLR.
23. It was contended that the plaintiffs had not proved their case to the required standard and urged the court to dismiss the plaintiffs case with costs.
24. I have considered the parties' pleadings, evidence and submissions and in my view, the following are the key issues falling for determination in this suit: -
  - i) Whether the plaintiffs have proved their case against the defendant to the required standard.



- ii) Whether the plaintiffs are entitled to the prayers sought?
  - iii) What orders should issue as to costs?
25. PW1 testified as to how he had surrendered the original documents of title L R No 209/12221/369 and the transfer to the defendant for registration, he also produced receipts dated May 14, 2004 and June 15, 2004 as proof that indeed their documents were deposited to the defendant for processing. He also testified that the said documents were misplaced and or lost in the custody of the defendant. PW1 also testified that the plaintiffs had been in the suit property for over 18 years as they await to obtain ownership documents of the suit property. There was no evidence adduced by the defendant to the contrary. In view of the foregoing, the court is satisfied that the plaintiffs have proved their case on a balance of probabilities in so far as they were the owners of the suit property and that the said transfer documents together with the title of the suit property were lost and or misplaced in the custody of the defendant.
26. From the testimony that was adduced, it is apparent that after the plaintiffs bought and/or purchased, what now constitutes the suit property and upon submission of all the relevant documents to the defendant for processing and the same being misplaced at the offices of the defendant, the defendant cannot turn their back and deny the same. It is unfortunate that since 2004 the plaintiffs had not been able to receive their ownership documents to the suit property owing to defendant's carelessness.
27. I find that the plaintiffs are entitled to all the rights, interest and privileges that pertain to the land. The plaintiffs are therefore entitled to the prayers sought.
28. On costs, the court is granted discretion under section 27 of the *Civil Procedure Act* to award costs. Evidently, costs usually follow the events unless special circumstances present themselves. The plaintiffs herein has succeeded in making their case and considering the anguish they have been through for all this time and further they being the successful litigants, they are entitled to costs of this suit to be borne by the defendant herein.
29. From the foregoing analysis, the plaintiffs have proved their case on a balance of probabilities and in this regard, this court makes the following final orders;
- a. A declaration that Timothy Gachanja Ngunyangi and Beatrice Njeri Gachanja are the legal owners of Land Reference Number 209/12221/369.
  - b. An order compelling the registrar of Titles to register Land Reference Number 209/12221/369 in the names of Timothy Gachanja Ngunyangi and Beatrice Njeri Gachanja.
  - c. The plaintiffs are awarded costs of the suit to be paid by the defendant.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF MAY 2022.**

**E K WABWOTO**

**JUDGE**

**In the virtual presence of:-**

**Ms Kalulu holding brief for Mr Nyakundi for the plaintiffs**

**N/A for the defendant**

**Court assistant: Caroline Nafuna.**

