



Kamau v Kibuika & another (Environment and Land Case Civil Suit E002 of 2021) [2022] KEELC 3056 (KLR) (26 May 2022) (Judgment)

Neutral citation: [2022] KEELC 3056 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE CIVIL SUIT E002 OF 2021**

LA OMOLLO, J

MAY 26, 2022

BETWEEN

PETER KARURI KAMAU PLAINTIFF

AND

LUCY MUTHONI KIBUIKA 1ST DEFENDANT

THE DISTRICT LAND REGISTRAR NAKURU 2ND DEFENDANT

JUDGMENT

Introduction

1. The plaintiff filed a plaint dated October 22, 2020. He avers that he purchased land parcel number Mau Narok/siapei Block 4/122 (Mukungugu) measuring approximately 0.7375 Ha from the 1st defendant.
2. He further avers that he purchased the suit land on behalf of Pambazuko Self Help Group and that after the purchase, the land was subdivided among the members of the self-help group. The members begun construction but later faced opposition from the beneficiaries of the estate of Stephen Kibuika Ranji, the 1st defendant's father, claiming that the suit property formed part of the deceased estate.
3. He averred that the title was reversed back to the deceased pursuant to a court order issued in Succession Cause No 1911 of 2012 and yet he had followed the due process in acquiring the suit property.
4. The plaintiff prays for judgement against the defendants for:
 - i. An order compelling the District Land Registrar Nakuru to register the suit property in the name of the plaintiff who is a bona fide purchaser for value.
 - ii. A refund of the purchase price together with the interest thereon and the cost of the developments done on the suit property by the plaintiff.



- iii. Cost of the suit together with interest thereon at court rates.
5. The defendants did not enter appearance or file any statement of defence.

Factual Background.

6. This suit was instituted *vide* a plaint dated October 22, 2020 and filed on February 15, 2021.
7. Subsequently, the plaintiff's filed a request for judgement as provided for in order 10 rule 10 of the Civil Procedure rules ie that the 1st defendant had failed to enter appearance and to file a defence within the stipulated period.
8. On February 23, 2022, the matter came up for hearing but the defendants were absent. Counsel for the plaintiff informed the court that the defendants had been served as ordered by the court both on December 2, 2021 and January 20, 2022.
9. The plaintiff's counsel pointed the court to affidavit of service dated June 22, 2021. The court on being satisfied that proper service had been effected upon the defendants ordered that the matter proceeds to hearing.
10. The matter then proceeded for hearing and the plaintiff gave his evidence.

Plaintiff's Evidence

11. At the hearing, the plaintiff; one Peter Karuri Kamau as PW1. He adopted his witness statement dated October 22, 2020 as part of his evidence.
12. He introduced himself as a business man dealing in buying and selling property and also engages in farming. He added that he lives in Mau Narok in Nakuru County.
13. It was his evidence that he is the purchaser for value for land parcel No Mau Narok/Siapei Block 4/122 (Mukungugu) which measures approximately 0.7375 hectares having bought it from the 1st defendant.
14. He produced as exhibits all the documents on his list of documents dated October 22, 2020 which were marked as exhibits P1, P2, P3, P4, P5, P6, P7, P8 (a-d), P9 (a-g), P10, P11, P12, P13 and P14.
15. The documents are a copy of title deed for Mau Narok/Siapei Block 4/122 in the name of the 1st defendant, search dated December 14, 2015, sale agreement dated September 17, 2015, original title deed for Mau Narok/Siapei Block 4/122 in the name of the plaintiff, letters dated July 28, 2016 and September 28, 2016, search dated October 27, 2016, bundle of documents for subdivisions, bundle of documents from Pambazuka Self Help Group, valuation report dated October 4, 2018, court order dated October 11, 2016, offer letter from Letshego dated August 14, 2018, copy of green card and ruling dated April 17, 2020.
16. PW1 testified that he knows the 1st defendant since he was her agent as he used to collect rent for her and that he bought the suit property from her and was given the original title deed. He testified that he did a search which indicated that the 1st defendant was the registered owner and then engaged the services of his lawyer who advised that they sign a sale agreement with a family member as a witness. It was his evidence that the 1st defendant's son witnesses the agreement.
17. He further testified on September 17, 2015 he entered into a sale agreement with the 1st defendant for the sale and purchase of the suit property for Kshs 3,600,000.



18. PW1 testified that he paid the purchase price via three cheques: cheque No 144 of Kshs 1,350,000, cheque No 145 of Kshs 1,020,000 and cheque No 146 of Kshs 1,000,000 all from K-Rep Bank.
19. It is his testimony that he also paid a cash sum of Kshs 230,000 which are all reflected in the sale agreement. He testified that transfer forms were signed, photos given and stamp duty paid to National Bank.
20. It was his evidence that the transfer forms were submitted to the Lands Registry after which registration took place and he collected his title. He then did a search dated 27th October, 2016 which showed that the suit land belonged to him.
21. He testified that he bought the suit land on behalf of Pambazuko Self Help Group who entrusted him with the money to purchase the property and all transactions were done in his name.
22. He further testified that he went to see a surveyor by the name Kiarie who placed beacons in the suit property and upon getting the necessary approvals, subdivision was done and each member of Pambazuko Self Help Group was given their portion.
23. PW1 testified that members of the group started cultivating and commenced construction until the family of Stephen Kibuika Ranji (deceased) came and uprooted the beacons.
24. He testified further that one of the family members told the plaintiff that he should inform the 1st defendant to inform her step mother to withdraw the application filed by him to be enjoined in the succession matter and that he should not claim the suit land.
25. It is his evidence that the members of the said Pambazuko Self-Help Group left the suit land after removal of the beacons, withdrew their shares in the group and demanded their money back from the plaintiff.
26. He testified that he tried to borrow money from Letshego using the title as security but upon the financial institution conducting a search, it was discovered that the suit property was registered in the name of Stephen Kibuika Ranji (deceased).
27. PW1 further testified that he never participated in the proceedings in Succession Cause No 1911 of 2012 at the High Court in Milimani which gave an order for the cancellation of his title.
28. He also testified that through his lawyer, he filed an application to be enjoined in the above suit but the court directed that he files his case at the ELC court and further that proceedings in the succession matter be stayed pending determination of this suit.
29. He went on to explain that he is currently in possession of the suit land and that he is also an agent of the 1st defendant's family since he collects rent for their mother Magdaline. He also testified that the members of the family confirm that the suit land is his.
30. PW1 concluded his testimony by praying that the court reinstates his title, a survey to be done and that the court grants him the orders as sought in the plaint.

Plaintiff's Submissions

31. The plaintiff in his written submissions gave a summary of the pleadings, an analysis of the evidence and identified the following issues for determination;
 - I. Whether the plaintiff acquired a good title from the 1st defendant.
 - II. Whether the plaintiff is a bona fide purchaser for value without notice.



III. Whether the plaintiff is entitled to the reliefs sought.

32. In answer to the question of whether the plaintiff acquired a good title. The plaintiff relied on section 24 and 25(1) and 26 of the [Land Registration Act](#).
33. The plaintiff also submitted that prior to purchase of the suit property, he conducted a search which revealed that the suit property was registered in the 1st defendant's name and that they did not have any encumbrances. In support of this position, the plaintiff referred to the decision in [Arthi Highway Developers Limited v West End Butchery Limited and 6 others](#) [2015] eKLR.
34. In answer to the question whether the plaintiff is a bonafide purchaser for value without notice, he submitted that he purchased the suit property in good faith and had no knowledge of any pending issues or fraud at the time of purchase as the 1st defendant had a valid title. In support of this point, he cited the decision in [Lawrence Mukiri v Attorney General & 4 others](#) [2013] eKLR and [Eunice Grace Njambi Kamall & another v The Hon Attorney General & 5 others](#).
35. On whether the plaintiff is entitled to the reliefs sought, it was submitted that based on the evidence adduced and exhibits produced, the plaintiff has proved his case on a balance of probability, his evidence was not controverted by the defendants and he is therefore entitled to the reliefs as sought.

Issues For Determination.

36. In my view, the issues for determination are
 - a) Whether the plaintiff is a bona fide purchaser for value
 - b) Whether an order should issue compelling the District Land Registrar Nakuru to Register the suit property in the name of the plaintiff.
 - c) Whether, in the alternative, the 1st defendant should refund the purchase price, interest thereon and cost of development on the suit property.
 - d) Who should bear the cost of the suit.

Analysis And Determination

37. I have taken into consideration the evidence of the plaintiff, documents filed in support of his case and the judicial decisions relied submitted.

A. Whether The Plaintiff Is A Bonafide Purchaser For Value

38. Evidence has been led that the plaintiff purchased the suit land from the 1st defendant. The plaintiff has attached documents to show the process he undertook prior to the acquisition of the suit land. These documents range from an official search dated December 14, 2015 which revealed that the suit property was at the time registered in the name of the 1st defendant, a copy of the title deed in the name of the 1st defendant- issued on September 2, 2015, the sale agreement between him and the 1st defendant- dated September 17, 2015 and a copy of a title deed registered in his name after the transfer process. The same was issued on September 24, 2015.
39. Evidence has also been led that subsequent to having the suit property registered in his name, the plaintiff's title to the suit parcel was cancelled pursuant to a court order of September 28, 2016. The order was issued in Succession Cause No 1911 of 2012; In The Matter of the Estate of Stephen Kibuika



Ranji. This was at the High Court in Nairobi. It would seem that the suit parcel was listed as forming part of the estate of Stephen Kibuika Ranji.

40. Subsequent to this court order, the plaintiff made an application to be enjoined as an interested party in the succession cause and a ruling of April 17, 2020 order dismissed the plaintiff's application and stated that the suit parcel would not be available for distribution until the land dispute was heard and determined.
41. Its important for me to mention the issues arising from the succession cause to demonstrate that the 1st defendant and other beneficiaries were aware of the claim by the plaintiff herein and further that the ruling delivered intended that the dispute in respect of the suit parcel be resolved by this court.
42. None of the beneficiaries joined this suit and the 1st defendant did not enter appearance or file any defence despite service.
43. It is not clear the nature of claim that the estate of the Stephen Kibuika Ranji might have in respect of the suit land and I will proceed to determine this matter on the presumption that there is none.
44. Upon evaluation of the evidence that was tendered, which evidence is uncontroverted, I find that indeed the plaintiff is a bona fide purchaser who completed the transaction with the 1st defendant and had the suit land transferred and registered in his name and remained the registered owner until the court order of September 28, 2016, granted in a succession cause.
45. I am a little reluctant to address the question of *bonafide* purchaser for value for the reason that the definition of "bona fide purchaser" for value presupposes the existence of an allegation or proof of fraud in the acquisition of title by a purchaser.
46. In this matter, although there has been no express allegation of fraud, it would not be a far-fetched deduction. This is for the reason that the suit property would otherwise not have been listed as forming part of the estate of the Stephen Kibuika Ranji. How can the suit property form part of the estate of the Stephen Kibuika Ranji and also be registered in the name of the 1st defendant?

The administrators of the estate of Stephen Kibuika Ranji and/or beneficiaries would have answered this question. They haven't.

47. In *Lawrence Mukiri v Attorney General & 4 others* [2013] eKLR, the learned judges cited with approval the decision by the Court of Appeal in Uganda in *Katende v Haridar & Company Limited* [2008] 2 EA 173 where it was held that;

"A bona fide purchaser for value is a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, he must prove the following:

- a) He holds a certificate of title;
- b) He purchased the property in good faith;
- c) He had no knowledge of the fraud;
- d) The vendors had apparent valid title;
- e) He purchased without notice of any fraud;
- f) He was not party to any fraud."



48. The plaintiff held a title deed, he purchased the property from the 1st defendant in good faith, he had no knowledge of fraud if at all there was any, the 1st defendant had an apparent valid title and a copy of the said title deed has been produced in evidence, the plaintiff has led evidence that he only transacted with the 1st defendant as owner of the suit property and the sale, transfer and registration was effected without encountering any problems.
49. Section 24 of the [Land Registration Act](#) No 3 of 2012 states that the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.
50. Section 25 of the said Act provides that the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject to encumbrances charges or leases shown on the register and the overriding interests as stated in section 28 of the Act.
51. Section 26 of the [Land Registration Act](#), 2012 provides;
- “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.
52. These provisions speak to the sanctity of title once it has been issued to a person. The process by which the title was cancelled and ordered to revert to the name of the deceased, in my view was erroneous and should never have happened. The positive from this cancellation is that a subsequent order referred the matter to this court for resolution.
53. A title document as *prima facie* evidence of ownership to land and conclusive evidence of proprietorship to land that can only be challenged on grounds as stipulated as above.
54. In this case, the evidence of the plaintiff is uncontroverted. There has been no allegation of fraud, misrepresentation or that the title of the plaintiff was acquitted through illegality, unprocedurally or through a corrupt scheme.
55. It is highly regrettable that the plaintiff has had to undergo unprecedented mental anguish resulting from a commercial transaction. He has explained that the suit parcel was purchased by him and that he was holding it in trust for members of Pambazuko Self Help Group. He also gave evidence of having obtained necessary approvals, had the suit parcel subdivided and each member of Pambazuko Self Help Group was given their portion. The process of transfer to the members never happened on account of the order of cancellation of the title held by the plaintiff. The members of Pambazuko Self Hep Group got tired of waiting for their tile documents, opted out and demanded a refund from the plaintiff.



56. To this end and for purposes of dispelling the deduction obtaining from the listing of the suit property as forming part of the estate of Stephen Kibuika Ranji, I find that the plaintiff is not only a purchaser but for the avoidance of doubt, also a innocent purchaser for value.

B. Whether An Order Should Issue Compelling The District Land Registrar Nakuru To Register The Suit Property In The Name Of The Plaintiff

57. Section 80 of the *Land Registration Act* provides as follows

- (1) Subject to subsection (2), the court may order the 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.
- (2) The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default

58. In view of my finding in (A) above, I find that it is just and equitable to issue an order compelling the District Land Registrar Nakuru to Register the suit property in the name of the plaintiff as it previously was.

C. Whether, In The Alternative, The 1st Defendant Should Refund The Purchase Price, Interest Thereon And Cost Of Development On The Suit Property

59. In view of my finding on the second issue for determination, and taking into consideration the fact that the defendant did not find it necessary to defend this suit despite service and that the family of Stephen Kibuika Ranji did not join this suit despite knowledge of its existence, I am unable to find any compelling reasons to order a refund of the purchase price, interest and cost of development.

60. The most appropriate order in the circumstances presenting in this case is to have the suit land registered in the name of the plaintiff as had previously been done.

D. Who Shall Bear The Costs Of This Suit?

61. The general rule is that costs shall follow the event in accordance with the provisions of section 27 of the *Civil Procedure Act* (cap 21).

62. In the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* SC Petition No 4 of 2012: [2014] eKLR. The Supreme Court held that costs follow the event and that the court has the discretion in awarding such costs.

Disposition

63. In view of the foregoing, I find that the plaintiff has proved his case on a balance of probabilities. Consequently, I make orders as follows;

- a. An order is hereby issued compelling the District Land Registrar Nakuru to register the suit property in the name of the plaintiff.



b. The plaintiff shall have costs of the suit.

64. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 26TH DAY OF MAY, 2022

LA OMOLLO

JUDGE

In the presence of: -

Miss Muhonja for the plaintiff.

No appearance for the 1st defendant.

No appearance for the 2nd defendant.

Court clerk; Mr Lepikas

