



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**ENVIRONMENT AND LAND COURT**

**E.L.C 206 OF 2013**

PETER KAMAU NGENGI.....PLAINTIFF

VERSUS

JANE WANJIKU MWANGI .....1<sup>ST</sup> DEFENDANT

**JUDGEMENT**

The plaintiff Peter Kamau Ngengi filed a plaint against the defendant, Jane Wanjiku on 21<sup>st</sup> February, 2013. The plaintiff is seeking the following orders:

1. A declaration that the plaintiff is the legally registered proprietor of all that parcel of land known as **Naivasha/ Maragishu/ Block 10/9 (Kedong)** ("suit land") and an order nullifying the validity of the defendant's title.
2. A permanent injunction restraining the defendant either by herself her employees, servants or agents from entering, wasting, trespassing onto or interfering with the plaintiff's peaceful and quiet occupation and possession of the suit land.
3. Costs of the suit and any other relief this court may deem fit to grant.

After filing the plaint and taking out summons the process server was unable to trace the defendant in person or through registered mail. The plaintiff was granted leave by this Court to serve the defendant by substituted service in a National newspaper. The plaintiff complied with the order of this Court and on 3rd of April, 2013 published a notice in the Standard Newspaper.

On 22<sup>nd</sup> April, 2013 the matter was set down for formal proof.

On 5<sup>th</sup> June, 2013 when the matter came up for hearing, the plaintiff gave oral evidence and produced the following documents among others:

1. A copy of the proposed subdivisions plan of I.R NO. 10854/3/ for the allocated list of members.
2. A copy of certificate of official search dated 11/7/2012.

3. An original certificate of official search dated 1/8/2012.
4. Certified copies of the extracts by the Naivasha Land District Registry both showing title no. Naivasha/ Maragishu/ block10/9 (Kedong) in the names of Peter Kamau Ngengi and Jane Wanjiku Mwangi.
5. Certified copy of an allotment list of members of Kedong Ranch Limited.
6. A copy of title deed in the name of Beth Ngonyo Ngengi issued on 11<sup>th</sup> April 2007.
7. Original and copy of title deed in the name of Peter Kamau Ngengi issued on 14<sup>th</sup> November 2008 For Naivasha/ Maragishu/ block10/9 (kedong)

During the hearing of the case, the plaintiff testified and called three independent witnesses. The plaintiff (PW1) testified that he was the registered owner of the suit land and that he entered into an agreement with his mother Beth Ngengi to purchase the suit land after she indicated to her children that she intended to sale it. He duly paid the entire consideration, the land was transferred to him and he was issued with a title deed on 14<sup>th</sup> December, 2008: That in August, 2012, he went to conduct an official search wanting to undertake a project on the suit land, and found the land was registered in his name but when his partners in the project carried out their own independent search they found that the land was registered in the name of Jane Wanjiku Mwangi, the defendant herein. He then gave a history of the suit land which was clearly elaborated by PW3. He concluded his testimony by categorically stating that he had never met the defendant and needed the court to do justice by cancelling her title to enable him subdivide the land which he was currently unable to do because of the duplicity of title.

PW2 Pascal Mbabu Wood testified that he was the Managing partner of Kedong Ranch Limited, a Company that owned many properties including L.R NO. 10854/3 . (Kedong) measuring 20,000 acres before subdivision and allocation to members in the 1990's. He confirmed that the exhibited list of members marked as exhibit 5 to be the 23 members of the company: That after subdivision block 10/9 was allocated to Beth Ngonyo Muigai who is also a director of the Company, who then fenced the land but never lived there or developed the land save for a small house for the caretaker. He also stated that he did not know the defendant as she was not one of the members of Kedong Ranch Limited or even a neighbor.

PW3 Beth Ngonyo Ngengi testified that she was a businesswoman and a director of Kedong Ranch Limited. That her late husband was the shareholder of kedong Ranch limited and after he died she took out letters of administration and took over his shares: That she was allocated Block 10/9 measuring about 197 acres, fenced the land and put up houses for the workers but never lived there: That she was given a title to the suit land in 2007: That she later sold the land to her son Peter Kamau who was issued with a title deed in 2008. She too stated that she did not know the defendant, had never seen her nor was she a member of Kedong Ranch Limited.

PW4 Susan Warithi Muchemi testified that she was a Land Registrar in Naivasha. She testified that according to records held in the land Registrar's offices, there were two certified copies of green cards relating to the suit land. The first one was registered in 2007 in the name of Beth Ngonyo Ngengi and the second one registered in the name of Jane Wanjiku Mwangi with remarks by the District Land Registrar "no dealing, fraud suspected". She explained that those remarks were inscripted because the defendant's name was not among those presented by Kedong Ranch Limited as one of their members. She asked the court to grant an order to enable her cancel the title in the name of Jane Wanjiku Mwangi and also dispense with the said title since she did not have authority to cancel the same.

The plaintiff claims that he is the registered owner of the suit property. He has produced a title deed and a certificate of official search to support this position. This is corroborated by PW3 and PW4 and is uncontroverted as the Defendant did not enter appearance.

I have considered the pleadings filed and the evidence adduced by the plaintiff in support of his case. The

rights of the plaintiff in the instant case are protected under sections 27 and 28 of the Registered Land Act (now repealed) Cap 300 which state as follows:

**section 27(a):**

**" 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....."**

**28. The rights of a proprietor, whether acquired on first registration or whether acquired 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 -**

**(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and**

**(b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 30 not to require noting on the register"**

After considering both the oral and documentary evidence adduced herein and applying the law, I am satisfied that the plaintiff has proved his case to the required standard. In the premises judgment is hereby entered in favor of the plaintiff as follows:

1. This court declares that the plaintiff is the legally registered proprietor of all that parcel of land known as Naivasha/Maragishu/ block10/9 (Kedong)
2. The Land registrar to nullify and cancel the defendant's title.
3. A permanent injunction is granted restraining the defendant either by herself her employees, servants or agents from entering, wasting, trespassing onto or interfering with the plaintiff's peaceful and quiet occupation and possession of the suit land.
4. I will not grant any costs since the defendants did not enter appearance and part of this fiasco was caused by the land Registrar.

**Dated, signed and delivered in open Court at Nakuru this 14<sup>th</sup> day of August 2013.**

**L N WAITHAKA**

**JUDGE**

**Present**

Ms Ayuma holding brief for Mr Konosi for the plaintiff

N/A for Defendants

Court Clerk: Stephen Mwangi

**L N WAITHAKA**

**JUDGE**