



**Ngaruiya & another v Kajiado & 2 others (Environment & Land Case
69 of 2018) [2022] KEELC 3490 (KLR) (19 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3490 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 69 OF 2018**

MN GICHERU, J

MAY 19, 2022

BETWEEN

MUNGAI NGARUIYA 1ST PLAINTIFF

ELIZABETH WANJIKU NGARUIYA 2ND PLAINTIFF

AND

LAND REGISTRAR, KAJIADO 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

BENJAMIN GACHAGUA NYAGA 3RD DEFENDANT

JUDGMENT

1. Mungai Ngaruiya and Elizabeth Ngaruiya, the plaintiffs, seek the following reliefs against the Land Registrar Kajiado, the Attorney General and Benjamin Gachagua Nyaga, the first, second and third defendants respectively;
 - a. A declaration that the plaintiffs are the legal owners of LR Kajiado/Kitengela/4130, suit land.
 - b. An order compelling the District Land Registrar Kajiado to rectify and amend the green card to the suit land and restore the plaintiffs as the legal owners of the suit land.
 - c. An order revoking any title deed issued to the third defendant.
 - d. Costs of the suit.
 - e. Any other relief that the court may deem just to grant.
2. The plaintiffs case is as follows; they are the registered owners of the suit land which they purchased at an auction. The land had been charged with Kenya Commercial Bank by one Reuben Ole Nakuo. The plaintiffs paid Kshs 2.5 million.



They obtained the necessary consent from the relevant Land Control Board and took possession of the land from May 26, 2005. They have never lost possession. They were also issued with a title deed. They also put up concrete pillars on the land.

During a routine search, the plaintiffs found out that the green card had the name of Benjamin Gachagua Nyagah. This person was unknown to the plaintiffs. They had not sold their land to the third defendant or any other person. They still had possession of the land and the original title deed thereto.

They made a report to the first defendant who did not take any action to rectify the anomaly. They also made a report to Criminal Investigations Department at Kajiado and the Ethics and Anti-Corruption Commission in Nairobi. Finally, the plaintiffs filed this action seeking the above reliefs.

3. In support of their case, the plaintiffs filed the following evidence;
 - a. First plaintiffs witness statement dated 20/2/2020.
 - b. Copy of letter to the Attorney General dated 2/7/2015.
 - c. Copies of letters to the Land Registrar Kajiado.
 - d. Copy of Title Deed for the suit land dated 26/5/2005.
 - e. Copy of the green card dated 6/9/2013.
 - f. Copy of certificate of official search dated 8/2/2012 showing the plaintiffs as the registered proprietors of the suit land.
 - g. Copy of letter by the Attorney General to the Principal Secretary Ministry of Lands dated 14/7/2015.
 - h. Copy of transfer by chargee to the plaintiffs dated May 2, 2005.
 - i. Copy of letter of consent dated 11/5/2005 from the Land Control Board authorizing the transfer of the suit to the plaintiffs.
 - j. Copy of cheque dated 30/3/2005 for stamp duty amounting to Kshs 50,000/=.
4. The first and second defendants filed a written statement of defence dated June 14, 2016 in which they denied the averments in the plaintiffs plaint. *Vide* paragraph 5, they aver that the transfer, if any, was done in good faith and upon representation of the plaintiff.

They also stated that the suit offends the mandatory provisions of section 13A of the [Government Proceedings Act](#). No witness statement or document was filed by the defendants.

The third defendant did not file anything in this case. There was no memorandum of appearance or a defence by this defendant.
5. At the trial on October 28, 2020 the first plaintiff testified and produced five (5) of his exhibits. Then on 11/3/2021, Mr Tanui the Land Registrar, Kajiado, testified and said that the entry of the third defendant's name on the green card of the suit land was suspicious. The Land Registrar requested the Criminal Investigation Department to investigate.

The third defendant did not appear to produce his title deed at the Land Registry. He also confirmed that no stamps duty was paid by the third defendant.
6. The plaintiffs' counsel filed written submission on 28/5/202 while the counsel for the first and second defendants filed hers on June 7, 2021.



In the defendants' submissions, it is said that no fraud has been proved by the plaintiff and since he is in possession, he has not suffered any loss to warrant the award of costs.

On the other hand, the plaintiffs' counsel urges that the plaintiffs' suit has been proved on a balance of probabilities and they are entitled to all the orders sought.

7. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, the documents and the oral testimony at the trial.

I have also considered the submissions by learned counsel for the parties and the issues raised therein.

I make the following findings;

Firstly, the plaintiffs have proved that they purchased the suit land in a lawful transaction and that they followed all the necessary procedures in acquiring the title to the suit land. The oral evidence by the first plaintiff is credible, consistent, backed by documentary evidence and uncontroverted by any evidence from any of the defendants.

Secondly, the third defendant though appearing in the register of the suit land at entry number 7, such entry dated 15/9/2010 has been proved to be fraudulent both by the evidence of the first plaintiff and that of the Land Registrar, Mr Tonui. Such entry is not supported by mandatory documents like evidence of payment of stamp duty, consent of the Land Control Board, transfer instrument, agreement for sale and land etcetera. Without these documents, the entry is fraudulent.

Thirdly, such fraud was perpetrated by officials of the Land Registry and no effort was made by the Land Registry to explain which of its officers countersigned the fraudulent entry.

For the above reasons, I enter judgment for the plaintiffs against the defendants jointly and severally as prayed for in the amended plaint dated November 1, 2019.

Order accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19TH DAY OF MAY, 2022.

M.N. GICHERU

JUDGE

