



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENTAL & LAND DIVISION
ELC CASE NO. 51 OF 2013

CLEOPHAS OMARIBA OYARO.....1ST PLAINTIFF
DOMINIC LUCAS MOTINDI.....2ND PLAINTIFF
MARGARET KEMUNTO MOTINDI.....3RD PLAINTIFF
IRENE MORAA ONSOMU.....4TH PLAINTIFF
ANNE MOKE SIMI.....5TH PLAINTIFF

-VERSUS-

**PETER NJABI NJOROGE (Suing as the Administrator or the Estate of PAUL MUCHIRI
NGARUIYA**
a.k.a PAUL MUCHIRI OLE NGARUIYA.....DEFENDANT

JUDGMENT

The Plaintiff by a plaint dated 1st August 2011 filed the instant suit and seeks the following orders:-

1. An order for permanent injunction against the Defendant his agents and/or servants or anyone claiming under him or his name or the Estate of **Paul Muchiri Ngaruiya a.k.a Paul Muchiri Ole Ngaruiya**, restraining them from interfering with Land Reference Numbers **Ngong/Ngong/22878, 16383, 49574 and 49575** in any manner whatsoever and the Defendant do pay exemplary damages for mental anguish and disturbance caused to the plaintiffs.
2. Costs of the suit.
3. Any other relief this Honourable court may deem fit and just to grant in the circumstances.

Simultaneously with the plaint the plaintiffs filed a Notice of Motion application seeking an order of injunction restraining the Respondent/his agents and/or servants or anyone claiming under him or his name or the Estate of Paul Muchiri Ngaruiya a.k.a Pual Muchiri Ole Ngaruiya from interfering with land Reference numbers Ngong/Ngong/22878, 16383, 49574 and 49475 in any manner whatsoever pending the hearing and final determination of this suit. Hon. Justice Musinga on 3rd August 2011 ordered that the Defendant be served with the pleadings and the Notice of Motion by way of substituted service by advertisement in the Daily Nation Newspaper and the Defendant was duly served by way of an

advertisement carried in the Daily Nation of 7th August, 2011. The defendant did not appear and did not file any response to the application and the court on 12th August 2011 granted the interim order of injunction. The Defendant subsequently never appeared and the plaintiff on 31st October, 2011 applied for interlocutory judgment which the Deputy Registrar endorsed on the 4th July, 2012 with a direction that the matter be formally proved.

The matter was fixed for formal proof hearing before me on 12th July, 2013 when CLEOPHAS OMARIBA OYARO the 1st plaintiff testified on his own behalf and on behalf of the other plaintiffs. The 1st plaintiff testified that plaintiffs are the registered owners of the under mentioned parcels of land.

1. Ngong/Ngong/22878 registered in the name of Cleophas Omariba Oyaro, the 1st Plaintiff.
2. Ngong/Ngong/16383 registered in the name of Dominic Lucas Motindi and Margaret Kemunto Motindi, the 2nd & 3rd Plaintiffs respectively.
3. Ngong/Ngong/49574 registered in the name of Irene Moraa Onsomu, the 4th Plaintiff.
4. Ngong/Ngong/49575 registered in the name of Anne Moke Simi the 5th Plaintiff.

Land parcels Ngong/Ngong/49574 and Ngong/Ngong/49575 are resultant subdivisions of land parcel Ngong/Ngong/20348 that was registered in the name of Irene Moraa Onsomu the 4th Plaintiff on the 5th September, 1997.

The 1st plaintiff testified that the plaintiffs purchased the parcels of land from one **Monica Koki (now deceased)** who was registered as owner of land title number Ngong/Ngong/5469 from which the said plaintiffs parcels of land were hived from and transferred to the plaintiffs. The plaintiffs took occupation of their respective parcels of land and have each built their residential homes and reside thereon and have resided thereat from about the year 1999/2000.

The 1st plaintiff states in his witness statement that they learnt of the existence of a Land Dispute Tribunal Case at Kajiado towards the end of 2010 which had resulted in the Kajiado SRM's application No. 26 of 2001 whereby orders had been given affecting land title No. Ngong/Ngong/5469 which required the defendant in that case to retransfer the subdivisions to the plaintiff. The plaintiffs have annexed a copy of the Land Disputes Tribunal Ruling and a copy of the Kajiado SRM's order in their bundle of documents.

The SRM's order 3 and 4 are in the following terms:-

3. The Plaintiff to be compensated by the defendant for any land which she illegally transferred to other people as per market value of the land.

4. The district Land Registrar to check his records and see that all pieces of land as a result of subdivision of Ngong/Ngong/5469 and transferred in the name of the defendant are transferred to the plaintiff.

The ruling by Kajiado Land Disputes Tribunal was given on 24th July, 2001 and the Kajiado SRM's Orders were given on 20th March, 2003 and hence could not affect those parcels of land that had already been transferred to the plaintiffs. I have reviewed the Tribunal ruling and the magistrate's orders and I am satisfied that only those subdivisions that were at the time of the Tribunal Ruling registered in the name of the defendant (**Monica Koke- deceased**) were affected by the ruling and/or order by the SRM's court Kajiado.

The plaintiff parcels of land as per the title documents were transferred to them in 1997 in the case of the 4th Plaintiffs' title number Ngong/Ngong/20348 and in 1999 in the case of the 1st, 2nd and 3rd plaintiffs. The 5th plaintiff's title is a product of the initial title of the 4th plaintiff (Ngong/Ngong/20348). It is my view therefore that the said plaintiffs titles could not in any way be affected by the order emanating from the Kajiado SRM's court following the Land Disputes Tribunal Ruling.

The plaintiffs averred that there was insistent effort by the Defendant herein through his Advocates to have the plaintiffs titles cancelled allegedly pursuant to the Tribunal Ruling and the said Kajiado SRM's court order referred to above.

The plaintiffs aver that the defendant either by himself and/or through agents has been meddling with the records of the plaintiffs titles at the Kajiado Land Registry with the intention of carrying through the unlawful act of having the plaintiffs titles cancelled and it is for that reason they seek a permanent order of injunction to restrain the defendant from interfering with their respective parcels of land in any manner.

I have reviewed the evidence by the plaintiffs, the pleadings and the documents tendered in support of the plaintiffs case and I am satisfied the plaintiffs have proved their case on a balance of probability. The plaintiffs have demonstrated that their subject parcels of land were purchased from Monica Koke and were transferred to them way before the end of 1999 and that they were in physical possession and each of them has constructed a permanent building on their respective parcels. The plaintiffs were bonafide purchasers for value a fact the Kajiado Disputes Tribunal appears to have acknowledged. The Tribunal in its findings stated thus:-

“That the Defendant has subdivided the said land in dispute and transferred some of the parcels to other people.

That there remains some of the pieces registered in her name (defendant)”.

And in its ruling the tribunal carried through this acknowledgment when it made the ruling that: -

“The plaintiff to be compensated by the defendant for any land which she illegally transferred to other people as per the market value of the land”.

In the premises it is abundantly clear that the parcels that had already been transferred to the plaintiffs were not to be affected and there is no basis whatsoever for the defendant to seek to have the plaintiffs respective titles cancelled and/or in any manner interfere with the plaintiffs parcels of land and/or the land registry records in respect of the same.

For all the above reasons I find and hold that the plaintiffs have proved their case save that I find no justification to award any damages as claimed. The plaintiffs did not lay any basis and/or demonstrate that they have suffered any damages and I will decline the prayer to award any damages.

In the result I will enter judgment in favour of the plaintiffs in the following terms:-

- a. That an order of permanent injunction be and is hereby issued against the Defendant/his agents and/or servants or anyone claiming under him on his name or the estate of Paul Muchiri Ngaruiya a.k.a Paul Muchiri Ole Ngaruiya restraining them from interfering with Land Reference Numbers Ngong/Ngong/22878, 16383, 49574 and 49575 in any manner whatsoever.
- b. The Land Registrar Kajiado Lands Office be and is hereby directed not to permit or allow any interference or meddling by the Defendant and/or the Defendants agents with the Land Registry records in respect of title numbers Ngong/Ngong/22878, 16383, 49574 and 49575.
- c. The costs of the suit are awarded to the plaintiffs.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPTEMBER 2013.

J. M. MUTUNGI

JUDGE

In the presence of:

.....for the Plaintiffs

..... for the Defendant