



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA AT NAKURU**

**CIVIL SUIT NO. 317 OF 2011**

**LUCY NJERI NGUNYANGI ..... 1<sup>ST</sup> PLAINTIFF**

**MAXWELL MUNENE ..... 2<sup>ND</sup> PLAINTIFF**

**ESTHER WANGUI ..... 3<sup>RD</sup> PLAINTIFF**

**JENIPHER WANGARI ..... 4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**THE CHIEF LAND REGISTRAR ..... DEFENDANT**

**JUDGMENT**

**LUCY NJERI NGUNYANGI, MAXWELL MUNENE, ESTHER WANGUI and JENIPHER WANGARI** (referred to as 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs respectively) have filed this suit against THE CHIEF LAND REGISTRAR (Defendant). The suit involves a parcel of land known as **NAKURU MUNICIPALITY/BLOCK 18/48** situated within Nakuru Municipality of Nakuru County, registered in the name of **MAHINDA JOSEPH MBUTHIA**. It is the plaintiff's case that the said parcel was sold and transferred to the 1<sup>st</sup> plaintiff's late husband and father of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs namely **one BENNYUNGANYI IRAGU** on **15/10/01**. BEN NYUNGANYI died on 7/12/2006, and the parcel is said to have devolved by transmission to the plaintiff on **10/11/08** as per **Succession Cause No.731 of 2007** (High Court Nakuru). At the time of the said transmission, the 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs were minors.

The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs sought and obtained orders from court, allowing them to sell the said parcel, and they sought the necessary consent for sale. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs paid the necessary charges for the rates clearance with the Municipal Council of Nakuru and the rent clearance with the Commissioner of Lands at Nairobi.

It was while the plaintiffs were seeking the consent of the Commissioner of Lands that two persons namely **GIRISHVAGHJI SHAH** and **VIPUL THARKARSI PATEL** claimed to be owners of the land. The two had filed **HCCCNo.122 of 2002** at the High Court against **BENNGUNYANGI IRAGU** and the Land Registrar Nakuru, over the same parcel of land, and they sought to be declared the lawfully registered owners of the parcel in question.

The Defendant therefore declined to give the plaintiff clearance to sell the said parcel and instructed the District Land Registrar Nakuru, in writing, to alter the particulars of registration by removing the plaintiff's names from the Register and substituting them with the names of **GIRISH VAGHJI SHAH** and **VIPUL THAKARSI PATEL**. Although the plaintiffs wrote to the Defendant protesting this decision, it

yielded nought. The defendant is also blamed for failing to take into account that there was a suit filed in court being HCCC No.122 of 2002. It is the plaintiff's contention that the parcel belongs to them and it would be illegal for the defendant to give it to other people. They also complain that it is unfair for the defendant to decline consent to the proposed transfer when he had given consent to previous transactions over the same parcel. Further, that plaintiff have all along occupied and developed the plot by putting a hedge around it, plangent trees and shrubs. Due to the foregoing, the plaintiffs seek that:

- (1) They be declared as the legal owners of the suit property.
- (2) The Defendant be restrained by himself, servants and/or agents from changing the particulars of the owners of the said parcel.
- (3) The Defendant be ordered to give consent to the transaction as sought by the plaintiffs.

The defendant failed to enter appearance or file a statement of defence, so an interlocutory judgment was entered and the matter proceeded on formal proof.

**PW1 (Lucy Njeri Ngunyangi)** told this court that the other plaintiffs are her children, it is her evidence that the parcel in question was registered in trust for herself and her co-plaintiffs. She explains that HCCC No.122 of 2002 abated in the year 2006 yet the Chief Land Registrar wrote to the District Land Registrar to change ownership. It is her contention that the Chief Land Registrar had no powers to order cancellation of Title.

The sale agreement showing that the plaintiff's late husband purchased the land from JOSEPH MBUTHIA MAHINDA has been presented in the plaintiffs list of documents – the transaction was to be confirmed by 5<sup>th</sup> September 2001. The certificate of official search shows the land initially belonged to Joseph Mbutia Mahinda and this is confirmed by the certificate of lease.

Correspondences from the office of the Commissioner of Lands, transfer of lease all recognise the said Mahinda as the owner and that he was transacting with Ben Ngunyangi Iragu. The certificate of confirmation of grant lists the suit property as one of the assets in the estate of BEN NGUNYANGI IRAGU, and orders issued were that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiff herein would hold the same in trust for themselves and the co-plaintiffs who were minorities at the time.

A perusal of other correspondences from the Ministry of Lands decision by a letter dated 22/12/2010 signed by J.K. Wanjau (for the Chief Land Registrar) both the 1<sup>st</sup> plaintiff and the other two persons claiming ownership had been summoned to appear before the Chief Land Registrar and give information and explanation regarding ownership of the suit land. Obviously there was a problem, as the same parcel was registered in the names of plaintiffs and also the other two individuals. Another letter dated 23/05/2011 written by KEN BOSIRE on behalf of the Chief Land Registrar of Lands claimed that the initial allottee of the property was JRO Masime who transferred it to Agutu Holdings and a lease document in that respect was prepared and registered on 9<sup>th</sup> October 1992. Agutu Holdings are said to have transferred the lease to GIRISH V. SHAH and VIPUL T. PATEL on 19<sup>th</sup> September 1995 but two files were used to prepare the two conflicting leases and these files were described as being fraudulent.

The letter refers to a different file number which is described as authentic, that the genuine owners are SHAH and PATEL. While this correspondence raises several concerns, unfortunately there was no defence filed, and it is not possible for this court to establish how the Chief Land Registrar was able to determine that the conclusive genuine file was the one in respect of SHAH and PATEL, and not the one in respect of MAHINDA and the plaintiffs and finally the order emanating from the grant, issued in court. This is significant because all those records emanate from the Ministry of Lands. Indeed the source of the preferred file is not disclosed.

In the absence of an explanation from the defendant as to what informed its decision, and taking into account the orders issued in the confirmation of grant, then:

1. The 1<sup>st</sup> Defendant must be restrained by himself, servants and/or agents from changing the particulars of the owners of the said parcel. Consequently orders of injunction do issue to that effect and remain in force until the issue of ownership is properly settled.
2. The evidence presented demonstrates that the plaintiffs have been registered as owners of the land in trust, as a consequence of confirmation of grant by the High Court Nakuru.

Correspondence from the Chief Land Registrar attributes ownership to Shah and Patel, but no evidence has been presented to this court to show that they legally transacted with the “**original**” allottee and should be regarded as bona fide owners. Yet I am hesitant to declare the plaintiffs owners and direct the defendant to grant consent because clearly the plaintiffs are aware of other persons claiming ownership over the land, yet they elected not to sue them in this matter. This appears mischievous to me because the plaintiffs are aware HCCC No.122 of 2002 abated, and for this court to declare them as the rightful owners, would definitely require the participation of SHAH and PATEL who have not been sued as defendants nor is there anything to suggest that they are aware of the existence of this suit. I therefore decline to grant prayer (b) and (c).

The plaintiffs shall bear 1/3 of costs while defendant bears 2/3 of the costs of this suit.

**Delivered and dated this 30<sup>th</sup> day of July, 2012 at Nakuru.**

**H.A. OMONDI**

**JUDGE**