



**Rorua v Noah Muresi Kurraru t/a Mwamba Property AgenciesAgencies;
Jepkemoi Kosgey & 3 others (Interested Parties) (Environment and Land Case
Civil Suit 871 of 2017) [2022] KEELC 3129 (KLR) (9 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 3129 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE CIVIL SUIT 871 OF 2017
MN GICHERU, J
JUNE 9, 2022**

BETWEEN

MASIOI ENE RORUA PLAINTIFF

AND

**NOAH MURESI KURRARU T/A MWAMBA PROPERTY
AGENCIES DEFENDANT**

AND

JEPKEMOI KOSGEY INTERESTED PARTY

TRANSITIONAL BANK LIMITED INTERESTED PARTY

LUMUMBA PATRICK INTERESTED PARTY

LAND REGISTRAR KAJIADO COUNTY INTERESTED PARTY

JUDGMENT

1. Masioi Ene Rorua, the plaintiff seeks the following reliefs against Noah Muresi Kurraru trading as Mwamba Property Agencies, defendant, and Jepkemoi Koskey, Transitional Bank Limited, Lumumba Patrick and land registrar, Kajiado county referred to as the first, second, third and fourth interested parties respectively;
 - a. General damages for the sum of kshs 16, 600,000/= and interest thereof.
 - b. A declaration the contract for sale of land is null and void.
 - c. An order for the revocation of certificate of title deed for all that parcel of land known as Kajiado/Loodariak/697.
 - d. Cost of the suit and interest on (a) and (b) above.



2. The plaintiff's case is as follows. On May 6, 2013, he sold the suit land to the first defendant for kshs 19,500,000/-. The defendant did not pay the entire purchase price. He paid only kshs 2,900,000/- leaving a balance of kshs 16,600,000/=. This is the amount that the plaintiff seeks together with interest.

In the alternative, the plaintiff seeks the revocation of the title to the suit land because it was not obtained procedurally. There was no consent from the Land Control Board. All the plaintiff did was to give the defendant the title deed for safe keeping pending payment of the balance on the purchase price.

In the meantime, the defendant caused the suit land to be subdivided into parcels no Kajiado/Loodariak/3048, 3049, 3050, 3096, 3097 and 3098. Parcels numbers 3048 and 3050 were sold or charged to the first, second and third interested parties.

3. In support of his case, the plaintiff filed the following evidence;
 - i. Witness statements by the plaintiff and his son namely Ntiati Ole Nkuruna.
 - ii. Copy of the register (green card) for the suit land.
 - iii. Copies of the register, green cards for parcel number 3050 in the name of the first interested party and 3048 in the name of the second interested party.
 - iv. Several acknowledgements to show that the plaintiff received various instalments of the purchase price from the defendant.
4. Only the second interested party filed a defence in this case. The same is dated October 14, 2019. It is to the effect that the first interested party applied for a loan of kshs 2.5 million from the second interested party against L R Kajiado/Loodariak/3050 registered in her name.

Prior to registering the charge and releasing the loan amount, the second interested party conducted due diligence and confirmed that the title was clean. At the time of filing the defence, the said loan had been cleared even though the title had not been discharged.

The defendant and other parties did not enter any appearance and the suit against them proceeded as undefended.

At the trial, only the plaintiff testified. He relied on his witness statement and also produced the exhibits.

5. The plaintiff's counsel filed written submissions on December 17, 2021 in which he raised three issues as follows;
 - i. Whether the sale and transfer of the land known as Kajiado/Loodariak/697 to the defendant was illegal, unlawful and or fraudulent?
 - ii. Whether the plaintiff is entitled to the prayers sought?
 - iii. Who should bear the costs?

6. I have carefully considered all the evidence adduced in this case by the plaintiff including the witness statements, documentary evidence and the court testimony.

I have also considered the submissions by the plaintiff's counsel. I make the following findings;

On the first issue, the plaintiff has not proved that the sale and transfer was illegal or fraudulent. No evidence was produced in this regard. Apart from the plaintiff's word of mouth, there was documentary evidence from land registry to prove the absence of the necessary documents like the



consent of the Land Control Board, transfer instrument, evidence of payment of stamp duty among other evidence.

The burden was on the plaintiff to not merely plead fraud but also to prove it. He did not.

On the second issue, I find that the plaintiff is not entitled to all the prayers. For example, he cannot be paid the balance of the purchase price and also get back his land. That would be unjust enrichment. I find that the fairest order would be that the defendant pays the plaintiff the balance of the purchase price, that is to say, kshs 16, 600,000/- together with interest at court rates.

I also award the plaintiff costs.

Order accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 9TH DAY OF JUNE, 2022.

M N GICHERU

JUDGE

