



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**CIVIL CASE NO. 89 OF 2010**

**ERASTUS MUNENE WANJOHI ..... PLAINTIFF**

**VERSUS**

**PETER KARANI KABIRU .....1<sup>ST</sup> DEFENDANT**

**DANSON MURIUKI KIHARA ..... 2<sup>ND</sup> DEFENDANT**

**(THE ATTORNEY GENERAL for & on behalf of  
LAND REGISTRAR KIRINYAGA .....3<sup>RD</sup> DEFENDANT**

**J U D G M E N T**

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants were served with summons but did not enter appearance or file any defence to the claim. The evidence of the Plaintiff was therefore not controverted.

The Plaintiff testified that by the sale agreement dated 19<sup>th</sup> July 2002 (exhibit 1) he bought land parcel No. KABARE/GACHIGI/1033 measuring about 0.4875 Ha. from one MICHAEL MURINGI KIBUI for kshs.320,000/= which he paid. The suit land was subsequently transferred to him and he obtained the title deed (exhibit 2). It was issued on 27<sup>th</sup> August 2003. He began to utilize the suit land. In 2005 some people came to the land saying they wanted to buy it from the 1<sup>st</sup> Defendant. This alarmed the Plaintiff who went to the lands office and found that the suit land was now in the name of the 1<sup>st</sup> Defendant. He found a Gazette Notice No.852 of 11<sup>th</sup> February 2005 (exhibit 3) indicating that the High Court in Nairobi in *Civil Case No. 295 of 2002* had issued a decree to transfer the suit land from him to the 1<sup>st</sup> Defendant. The Notice indicated that he had refused to produce the original title deed and the land registrar Kirinyaga District was going to dispense with the production of the title deed. The Plaintiff was unaware of either the Notice or the suit. He went to High Court in Nairobi and obtained a copy of the Plaintiff (exhibit 4) and a copy of the decree (exhibit 5) in the suit. They referred to different parties and claim.

The Plaintiff subsequently filed the present suit seeking a declaration that he was the lawful owner of the suit land. He sought rectification of the register to cancel the entries in favour of the Defendants and also the cancellation of the title deed issued to the 1<sup>st</sup> Defendant and subsequently to the 2<sup>nd</sup> Defendant. Lastly, he asked for a permanent injunction. What had happened was that 1<sup>st</sup> Defendant had subsequently transferred the suit land to the 2<sup>nd</sup> Defendant. The Plaintiff had not dealt with either of them

over the suit land, or at all.

I accept the evidence of the Plaintiff and find that the suit land was fraudulently transferred to the 1<sup>st</sup> Defendant and to the 2<sup>nd</sup> Defendant. The suit land legally and rightly belongs to the Plaintiff. The Land Registrar, Kirinyaga is directed to rectify the register in regard to the suit land by canceling all entries relating to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and to reinstate the Plaintiff as the registered proprietor. There shall be permanent injunction restraining the Defendants from dealing with the suit land in any manner. The two Defendants will pay the costs of this case.

**DATED, SIGNED AND DELIVERED AT EMBU THIS 28<sup>TH</sup> DAY OF JULY 2011**

**A.O. MUCHELULE  
JUDGE**