



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Environmental & Land Case 518 of 2008

JOHN MWANGI NJOROGE PLAINTIFF

VERSUS

MS. LEAH WAIRIMU 1ST DEFENDANT

MATHEW MACHINA KAMAU 2ND DEFENDANT

JUDGMENT

At the centre of these proceedings is a piece of land at Makuyu in Murang'a District known as LR. No.Mitubiri/Wempa/Block 1/1888. The plaintiff bought this parcel of land from one Mwenji Kinuthia at a consideration of Kshs.25,000/-. There was a written agreement to that effect and they subsequently obtained Land Board consent leading to the registration of the land in the plaintiff's name.

At some point, his father's house was broken into and all his documents including the said title deed were stolen. The theft was reported to the Police who issued an abstract form. The said transaction was in 1990 and the title deed was issued in 1991. The theft of the documents was in 1995. When the plaintiff started looking for a new title deed in 1996, he was told to advertise the loss in the Kenya Gazette and that is the time he learnt that his land had been transferred to the 1st defendant. He persuaded the land Registrar to place a restriction in the title and reported the matter to the CID. The 1st defendant could not be found and later the plaintiff discovered that the land had been transferred, yet again, to the 2nd defendant.

That is the time he moved the court to claim his land and an order that the defendants be restrained from selling, dealing and/or disposing off his land whatsoever and that the District Lands Registrar, Thika, be ordered to nullify the titles issued to the 1st and 2nd defendants and a new title be issued in his name.

The two defendants filed defences to the suit. It is the 1st defendant's defence that she bought the land from one Njeri and having paid her the full amount, the land was transferred to her. Subsequently, the 1st defendant sold the land to Mathew Muchina Kamau after the Land Control Board gave consent to do so. The 2nd defendant on the other hand, filed a defence and stated that he bought the land from Leah Wairimu the 1st defendant, who transferred the same to him after full payment and that he was now the lawful owner of the same.

The plaintiff gave evidence in support of his pleadings and produced a bundle of documents as exhibits to prove his case. In his evidence in chief, he reiterated the contents of his plaint that he bought the land from his grandfather Mwenji Kinuthia in May, 1990 and the Land Control Board gave consent to the transaction. He produced documents including the agreement of sale between him and his grandfather together with the Land Control Board consent. He also produced a copy of the Kenya Gazette in which the Land Registrar advertised the loss of his title deed and the notice to issue a replacement thereof.

He called P.W 2, 3 and 4 who witnessed the agreement for sale and it is instructive to note that PW2 is his grandfather who sold him the said parcel of land. The list of documents produced by the plaintiff included some in the name of Kandara Investment Co. Ltd which was the original owner of the said land and which issued share certificates to Mwenji Kinuthia who transferred his interests to the plaintiff. The plaintiff told the court that he did not know the 1st defendant or the 2nd defendant and that he never sold any land to the 1st defendant. On that evidence, he prayed for the orders sought in the plaint. The 1st defendant on the other hand, gave evidence in support of her defence and produced documents to show that she bought the land from one Njeri on behalf of John Njoroge Mwangi. She said that she bought the land in 1995 after meeting John Njoroge who used to visit her husband and who heard that she wanted some land to buy. The land was sold to her for Kshs.80,000/= which she paid by instalments until completion. When she went to Kandara Lands Office she obtained a consent from Kandara Investment Ltd. to transfer the land which was confirmed to belong to Lucy Njeri and John Njoroge. The John Njoroge who sold her the land was not the plaintiff in court. She subsequently transferred the land to the 2nd defendant.

The 2nd defendant on the other hand, repeated what he stated in his Statement of Defence and stated that he bought the land from the 1st defendant which transaction was completed by his father Kamau Mungai. He stated that he moved onto the land and lived thereon but subsequently changed his story and said he had no home on that piece of land. When he was given time to produce the Land Control Board consent, he did not do so.

I have considered the evidence before me and the following salient points stand out. The land was originally owned by Mwenji Kinuthia. He was allocated ballot No.1888 by Kandara Investment Ltd. That was the number that subsequently turned out to be the number of the title deed herein. Thereafter Mwenji Kinuthia transferred the land and the title was issued in the name of the plaintiff herein. There is evidence that all his documents were subsequently stolen and he has produced a police abstract to show that theft. On 28th June, 1996 vide Gazette Notice No.3615 the Land Registrar, Murang'a District gave notice of the issue of a new land title deed in favour of the plaintiff herein if no objection was received within sixty (60) days.

That is the point at which the plaintiff herein discovered that the land had been transferred to the 1st defendant. The agreement for sale produced by the 1st defendant allegedly transferring the land to her by one John Njoroge did not bear the number of this parcel of land. It is also not clear how she managed to get the identity card number which tallied with that of the plaintiff. When challenged to call the said John Njoroge she refused and in my opinion this is because the said John Njoroge is the plaintiff herein and that on a balance of probability the said agreement was entered into by parties who may have had the documents of the plaintiff which had been stolen from his father's house.

The said documents were never recovered and from the submission on behalf of the 1st defendant filed by her learned counsel there is a suggestion that the plaintiff transferred the land to the 1st defendant. This cannot be true because the 1st defendant has denied any knowledge of the plaintiff herein. In her own words, **"the John Njoroge who sold me the land is not the plaintiff in court."** The suggestion therefore is self defeating. Further, the plaintiff would not have filed this suit against the 1st defendant if it were true that he sold the same to her. It is instructive to note that the plaintiff told the court, he met the 1st defendant for the first time in court.

I looked at the parties herein testify. I clearly also observed their demeanour. The plaintiff impressed me as a truthful witness whose only quest was to get back his land that had been unlawfully acquired by the defendants without his knowledge and/or consent.

The bundle of documents that he produced contained exhibits that were consistent with his evidence and also his character. On the other hand, the 1st defendant came out as a person who had so much to tell but did not want to tell the truth in respect of this case. Her shifting the blame or responsibility to someone called Njeri and also the fact that she told the court she paid Kshs.80,000/= whereas the copy

of the green card shows that she paid Kshs.5,000/= for the said parcel of land, completely destroys her credibility as a truthful witness. I am persuaded that she did not buy any land from anybody called John Njoroge and that this transaction must have been coined by people, including the 1st defendant, using the plaintiff's stolen documents.

The sale of the land by the 1st defendant to the 2nd defendant cannot be lawful because the 1st defendant did not have a legal title capable of being transferred to the 2nd defendant or to any other person for that matter. In any case, the transaction between the 1st defendant and the 2nd defendant did not have the Control Board consent and therefore was void *ab initio*. In my judgment therefore the plaintiff has proved his case against both defendants jointly and severally. The District Land Registrar, Thika shall now nullify the titles issued to the 1st and the 2nd Defendants and register the plaintiff as the proprietor of the said parcel of land. The two defendants shall permanently be restrained from interfering with the plaintiff's interests in the said title LR. No.Mitubiri/Wempa/Block 1/1888. The plaintiff shall also have the costs of this suit.

Orders accordingly.

Dated, signed and delivered at Nairobi this 17th day of March, 2010.

A. MBOGHOLI MSAGHA
JUDGE