



REPUBLIC OF KENYA

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

Environmental & Land Case 66 of 2009

HILDA NJOKI THIANIPLAINTIFF

V E R S U S

LUCY WAMBUI MUTURI1ST DEFENDANT
ELIZABETH MUTHONI NDUNGU2ND DEFENDANT

J U D G M E N T

The Defendants were sued in their capacity as the administrators of the estate of the deceased Peter Ndungu Muturi who died on 22nd January, 1997. At the time of his death he was the registered proprietor of parcels Limuru/Rironi/595 and Limuru/Rironi/596. He became the registered owner of the parcels on 8th August, 1994. Prior to that the parcels were registered in the names of the Plaintiff. The suit was filed on 23rd February, 2009 seeking a declaration that the registration of the titles in the names of the deceased was fraudulent, wrongful, null and void and that the deceased had no legal or proprietary interest in the parcels. The Plaintiff asked for an order directing the Land Registrar Kiambu District to cancel the registers relating to the two parcels and to rectify the registers to reflect her as the absolute proprietor.

The suit was not defended. No appearance was entered or defence filed by the Defendants. The matter proceeded by way of formal proof.

The evidence of the Plaintiff was that she was the owner of the two properties. On 29th March, 1994 she agreed to sell 596 to the deceased for a sum of KShs. 150,000/= (“HNT 4”). She was paid KShs. 30,000/= and was to receive the balance of KShs. 120,000/= upon obtaining the consent of the Land Control Board and upon her executing the transfer documents. She did not obtain the consent and neither did she execute the transfer. Her reason was that the deceased had failed to pay the balance. Somewhere along the line, the deceased requested her for the original title to be able to secure the release of his relative on bond in a criminal case at Kibera court. The title deed was indeed lodged in the court for quite a while. Unknown to her, the deceased somehow managed to get himself registered as proprietor of the land. In May, 2008 she sought to sell 595 to a third party. She had custody of its title deed. When she went to the lands office to transact the sale she found that even this land had been registered in the name of the deceased.

According to Kiambu District Land Registrar Jonathan Ndirangu Kingori (PW1), the deceased had gone to the registry and cheated that the title deed to 595 was lost. This caused the gazette of the loss in Legal Notice No. 47370 of 23rd August, 1996. Subsequently a new one was issued and he got registered. It is in 2008 that the Plaintiff came complaining as she held the original title.

The court appreciates that a registered proprietor of land has under **section 27** of the **Registered Land Act (Cap. 300)** absolute and

indefeasible claim to it. However, under **section 143 (1)** of the **Act** the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that the registration (other than a first registration) has been obtained, made or omitted by fraud or mistake.

The registration of the deceased as proprietor of the two titles was fraudulent and illegal in each case. For 596, the consent of the Land Control Board was not obtained which nullified the transaction by virtue of **section 6 (1)** of the **Land Control Act (Cap. 301)**. Secondly, the deceased did not provide the agreed consideration. Thirdly, he fraudulently used the title deed he had been given to use as security to obtain the registration. For 595, he lied to the lands office that the title deed was lost when it was with the Plaintiff. In either case, the deceased forged the signature of the Plaintiff to obtain transfer.

I find for the Plaintiff and order the rectification of the register in respect of 595 and 596 and direct the cancellation of the registration which had been done in the names of the deceased. It is ordered that the parcels shall revert back to the Plaintiff as the registered proprietor. Costs will follow the event.

**DATED, DELIVERED AND SIGNED AT
NAIROBI**

THIS 30TH DAY OF SEPTEMBER 2010

**A. O. MUCHELULE
JUDGE**