

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL CASE 94 OF 2003

WARUTERE TORO PLAINTIFF

VERSUS

MARGARET WANJIKU MUNDIA DEFENDANT

JUDGMENT

By a plaint dated 24th October 2003 and filed in this court on the same day, **Warutere Toro** who has since passed on but substituted in this proceedings by his son, **Francis Muraguri Warutere** hereinafter referred to as "*the Plaintiff*" sued **Margaret Wanjiku Mundia**, hereinafter referred to as "*the defendant*" seeking that the register in respect of **Naromoru Block 1/Ragati/214** be rectified by deleting the name of the defendant and in substitution thereof the name of the Plaintiff be entered. The Plaintiff also asked for the costs of the suit. The Plaintiff's claim was anchored on the fact that by virtue of buying shares in Ragati Farmers Co-operative Society Limited he was allotted Land Parcel **Naromoru Block 1/Ragati/214** measuring 4.41 hectares hereinafter referred to as "*the suit premises*". On 11th November 1987 the Plaintiff was issued with the title deed in respect of the suit premises. However sometimes in 1995 the suit premises were fraudulently transferred and registered in the name of **Kinyua Kinyuthe**, now also deceased. In 1996 the said **Kinyua Kinyuthe** however fraudulently transferred the suit premises to the defendant. The Plaintiff's contention thus is that he is the legal owner of the suit premises and the name of the defendant ought to be removed from the Register by way of rectification and substituted therefore with his name.

The defendant having been duly served with summons to enter appearance, failed to do so within the stipulated time frame. Accordingly interlocutory judgment was entered on 13th November 2006. On 25th March 2009, this suit came before me for hearing by way of formal proof.

The substituted plaintiff in an evidence stated that his late father was a member of Ragati Farmers Co-operative Society Limited. Having paid his shares he was allocated the suit premises. He was shown the suit premises on the ground and took possession thereof by clearing the bushes and fencing it. He was later issued with the title deed in November 1987. The Plaintiff however later learned that the suit premises had been mysteriously and fraudulently transferred and Registered in the name of one, **Kinyua Kinyuthe**, since deceased. A year later the same was transferred to the defendant. From the foregoing evidence, it is quite clear that the suit premises belonged to the Plaintiff. They were illegally; unlawfully and fraudulently transferred and registered in the name of **Kinyua Kinyuthe**. The Plaintiff still retains the initial title documents in respect of the suit premises. Thus the Plaintiff's name was unlawfully removed from the register. The said **Kinyua Kinyuthe** had no legal title that he would have otherwise transferred to the defendant. It is also clear that the defendant though apparently a holder of dubious title documents in respect of the suit premises has never set her foot on the suit premises.

The Plaintiff's evidence having not been challenged and or controverted, I am satisfied that he has proved his case on a balance of probability. Hence he is entitled to the orders sought in the plaint. Accordingly I now enter final judgment in terms of the prayers sought in the plaint.

Dated and delivered at Nyeri this 11th day of May 2009

M. S. A. MAKHANDIA

JUDGE