



**Patel & 3 others v Mohammed & 2 others (Environment & Land Case
117 of 2020) [2022] KEELC 12632 (KLR) (26 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 12632 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 117 OF 2020
BM EBOSO, J
SEPTEMBER 26, 2022**

BETWEEN

**AVIANA MIHIR PATEL 1ST PLAINTIFF
RAVEENA MIHIR KUMAR PATEL 2ND PLAINTIFF
AASHIN MIHIR PATEL 3RD PLAINTIFF
MAADHAV MIHIR PATEL 4TH PLAINTIFF**

AND

**FIROZ YUSUF MOHAMMED 1ST DEFENDANT
THE CHIEF LAND REGISTRAR 2ND DEFENDANT
THE ATTORNEY GENERAL 3RD DEFENDANT**

JUDGMENT

1. The plaintiffs initiated this suit through a plaint dated 1/12/2020. Their case is that, at all material times, they were the registered proprietors of Land Parcel Number Lari/Kirenga/575 [the suit property] and that they had enjoyed quiet possession of the suit property since May 2016. On diverse dates in June 2019, strangers visited the suit property with the intention of buying it. The plaintiffs had not expressed any intention of selling the suit property.
2. Alarmed by the visits, they conducted a search at the Kiambu Lands Registry. The search revealed that the suit property had been transferred to the 1st defendant [Firoz Yusuf Mohamed] on November 15, 2016. They contend that the said transfer was fraudulent and/or illegal because they were not privy to it. They have itemized various particulars of fraud/illegality. They contend that through the assistance of the Directorate of Criminal Investigations, it was intimated to them that Land Registry Records relating to the suit property had been altered by and/or with the approval of the 2nd defendant in collusion with the 1st defendant. They contend that the “fraudulent and illegal actions of the 1st and



2nd defendants” have infringed on their right to property and they have suffered irreparable loss and damages.

3. They seek the following verbatim reliefs against the defendants:
 - a. A declaration that the plaintiffs are the lawful and rightful owners of all that piece of land known as property title No. Lari/Kirenga/575.
 - b. A mandatory injunction directed at the 2nd defendant to cancel and/or revoke the title deed, land register entries and/or green card records to property title No. Lari/Kirenga/575 issued in favor of the 1st defendant.
 - c. A mandatory injunction directed at the 2nd defendant to amend and/or reconstruct the lands register, title documents and green card entries of all that land described as property title No. Lari/Kirenga/575 to restore the plaintiffs as the true proprietors.
 - d. A mandatory injunction restraining the 1st and 2nd defendants either by themselves, their servants, agents and/or employees from interfering, effecting and/or causing to be effected a transfer in ownership of the suit property other than with the approval of the plaintiffs.
 - e. General and punitive damages.
 - f. Costs of this suit.
 - g. Interest on (e) and (f) above
 - h. Any other relief that the honorable court may deem fit to grant.
4. The 1st defendant was served with summons to enter appearance through the Daily Nation Newspaper Edition of 3/5/2021. The said service was effected pursuant to an order granted by the Deputy Registrar of this court on 7/4/2021. He did not enter appearance. Consequently, the suit against the 1st defendant is undefended.
5. The 2nd and 3rd defendants filed a statement of defence dated 1/3/2021 in which they denied fraud/illegalities and averred that if there was any transfer effected on the suit property, then the same was done in compliance with the law and the laid down procedure. They urged the court to dismiss the suit against them.
6. At trial, the plaintiffs led evidence by Mihirkumar Kirtikumar Patel who testified as PW1. He adopted his written statement dated 1/12/2020. His evidence was that the four plaintiffs in this suit are his children. Three of them live abroad and one lives in Nairobi. The four plaintiffs had authorized him to testify in this suit. The four plaintiffs purchased the suit property from M/s Nyakaru Investment Ltd in 2016. The vendor transferred the suit property to the plaintiffs through a transfer dated 6/5/2016 and the suit property was registered in the names of the plaintiffs on 11/5/2016 and a title deed was issued. On the same day, the Land Registrar issued a certificate of official search confirming that the suit property had been registered in the names of the plaintiffs. The plaintiffs took vacant possession and enjoyed quiet possession of the suit property until June 2019 when unknown persons started making visits to the land with the intention of buying it. This prompted the plaintiffs to conduct an official search and the search revealed that changes had been made to the Land Register to reflect the 1st defendant as the registered proprietor of the suit property effective from 11/5/2016. The plaintiffs immediately reported the matter to the Chief Land Register as well as to the Directorate of Criminal Investigations [the DCI]. Upon conducting investigations, the DCI established that the land register had been unlawfully altered to reflect the 1st defendant as the proprietor of the suit property. Efforts of



the DCI to trace the 1st defendant were unsuccessful. The 2nd defendant demanded that the plaintiffs obtain a court order to enable him rectify the register. He produced a total of 15 exhibits.

7. In his evidence during cross-examination, he stated that he did not know if there was collusion between the 1st and 2nd defendants. Shown the DCI report, he confirmed that the Land Registrar who was alleged to have signed the green card denied signing it and the documents examiner similarly confirmed that the signature on the green card was not authored by the said Land Registrar.
8. The plaintiff filed written submissions dated 4/4/2022 through M/s Mwaura & Wachira Advocates. Counsel for the plaintiff itemized the following as the four issues falling for determination in the suit; (i) Whether the alterations in the land records for Lari/Kirenga/575 were lawful; (ii) Whether the plaintiffs are entitled to the orders sought; (iii) Whether the plaintiffs are entitled to general and punitive damages; and (iv) Who ought to bear costs of the suit.
9. Counsel submitted that no transfer documents were availed to the DCI to support the impugned entry. Counsel added that the DCI having established that the impugned entry was a forgery it was clear that the alterations to the land records were unlawful.
10. On whether the plaintiffs are entitled to the orders sought in the plaint, counsel submitted that the plaintiffs had proved that they were the registered proprietors of the suit property and that the land records had been altered fraudulently to reflect the 1st defendant as the registered proprietor. Counsel urged the court to grant the orders sought in the plaint.
11. On the plea for general and punitive damages, counsel submitted that the plaintiffs had endured hardship, pain and suffering, adding that the acts of the defendants had disrupted the plaintiffs' farming activities. Counsel urged the court to award the plaintiffs Kshs 10,000,000 as general damages and Kshs 5,000,000 as punitive damages. Counsel urged the court to award the plaintiffs costs of the suit.
12. The Attorney General filed written submissions on his own behalf and on behalf of the 2nd defendant through Ms Fatuma, State Counsel. The learned state counsel submitted that the plaintiffs had failed to prove fraud on part of the Land Registrar. Counsel contended that investigations by the DCI had established that the signature on the green card was not authored by the Land Registrar.
13. On the plea for general damages, counsel for the 2nd and 3rd defendants submitted that general damages is a discretionary remedy awarded based on the evidence placed before the court. Counsel added that the plaintiffs had not placed before the court evidence to prove that they conducted farming activities on the land and that the alleged farming activities were interrupted. Counsel argued that if there was any financial loss suffered by the plaintiffs as alleged, then the loss ought to have been pleaded as part of special damages and ought to have been strictly proved. Counsel added that there was no basis for the plea for punitive damages. Counsel urged the court to dismiss the plaintiffs' suit with costs.
14. I have considered the parties' pleadings, evidence and submissions. I have also considered the relevant legal frameworks and the relevant jurisprudence on the questions that fall for determination. The parties did not agree on a common statement of issues to be determined by the court. Taking into account the parties' pleadings and submissions, and noting that the claim against the 1st defendant is undefended, the following are, in my view, the key issues that fall for determination in this suit: (i) Whether the registration of the 1st defendant as proprietor of land parcel number Lari/Kirenga/575 was procured fraudulently; (ii) Whether the 2nd defendant was privy to the impugned registration; (iii) Whether the plaintiff is entitled to the reliefs sought in the plaint as against all or any of the defendants; and (iv) Who should bear costs of this suit. I will make brief sequential pronouncements on the four issues in the above order.



15. The first issue is whether the registration of the 1st defendant as proprietor of land parcel number Lari/Kirenga/575 was procured fraudulently. The impugned registration is expressed as having been effected on 11/5/2016. At that time, the *Land Registration Act* 2012 was in force and was the law governing registration of transfers. Section 44 of the Act required that every instrument disposing an interest in land be executed by each of the parties disposing the interest. Every person executing an instrument of disposition was required to appear before the Land Registrar or public officer or other person as prescribed for the purpose of verification. Upon identification and ascertainment that the instrument was executed freely and voluntary, the verifier was expected to complete a certificate to that effect. Under Section 37(2) of the Act, a transfer would be effected by filing the instrument of transfer and registration of the transferee as proprietor of the land.
16. In the present suit, the plaintiffs led evidence demonstrating that they did not dispose their interest in the suit property. They did not execute any instrument of transfer in favour of the 1st defendant. They did not know the 1st defendant. The plaintiffs further led evidence establishing that the impugned transfer was not registered by the Land Registrar who was expressed as having effected it.
17. The logical conclusion to be drawn from the above evidence is that the registration was illegal and fraudulent. It was illegal and fraudulent because it was intended to deprive the plaintiffs ownership of the suit property without following and adhering to the requirements stipulated by the law. That is the finding of the court on the first issue.
18. The second issue is whether the 1st defendant was privy to the impugned registration. The plaintiffs contend in the plaint that the 1st and 2nd defendants colluded to fraudulently cause the plaintiffs' title to be registered in the name of the 1st defendant. However, during trial, they presented an investigation report by the DCI in which the DCI established that the 2nd defendant was not privy to the impugned registration. PW1 testified that investigations by the DCI established that the Land Registrar who was expressed as having registered the instrument of disposition did not register the instrument. Given the above evidence, the court has no proper basis upon which to hold the 2nd defendant liable for fraud. That is the finding of the court on the second issue.
19. The third issue relates to the question as to whether the plaintiffs are entitled to the remedies sought in the plaint. The first relief is a declaration to the effect that the plaintiffs are the lawful and rightful owners of the suit property. The court has made a finding to the effect that at all material times, the suit property belonged to the plaintiffs, and that the registration of the suit property in the name of the 1st defendant was illegal and fraudulent. It therefore follows that the plaintiffs are the lawful and rightful owners of the suit property. The plaintiffs are therefore properly entitled to prayer (a).
20. Prayers (b) and (c) are orders annulling the fraudulent entries and title and restoring the plaintiffs' registration. Prayer (d) is an order restraining the defendant against adversely interfering with the plaintiff's ownership of the suit property. Given the above finding, the plaintiffs are, in my view, properly entitled to the above reliefs as against the 1st defendant.
21. On the plea for general damages and punitive damages, the plaintiffs demonstrated that the impugned registration was procured fraudulently and it was intended to deprive them of their land. They had to quickly involve the police with a view to protecting their title to the suit property. I have no doubt that they have been subjected to painful moments of anxiety. I will award each of them nominal damages of Kshs 500,000, together totaling to Kshs 2,000,000, as against the 1st defendant. The sum will attract interest from the date of this judgment. No basis was laid to warrant an award of punitive damages.
22. On costs, no basis was laid to warrant a departure from the general principle under Section 27 of the *Civil Procedure Act*. In the circumstances, the 1st defendant will bear costs of this suit.



23. The 2nd defendant will escape liability because fraud was not proved against him. This is not to say that the 2nd defendant was not culpable for some other torts. Indeed, I would not have had hesitation in holding the 2nd defendant negligent in handling the land register had the tort of negligence been pleaded. However, I will not find liability on account of a tort that was not pleaded.

Disposal Orders

24. In the end, Judgement is entered in favour of the plaintiffs and against the defendants in the following terms:-
- a. A declaration is hereby made that the plaintiffs are the lawful and rightful owners of land parcel number Lari/Kirenga/575.
 - b. An order is hereby issued directing the 2nd defendant to cancel and/or revoke all the entries made in the above land register and any other land record reflecting the 1st defendant as the proprietor of the land, and the 2nd defendant is further directed to cancel or nullify any title purporting to bear the 1st defendant as proprietor of land parcel number Lari/Kirenga/575.
 - c. An order is hereby issued directing the 2nd defendant to restore the plaintiffs as the legitimate proprietors of land parcel number Lari/Kirenga/575.
 - d. The 1st defendant is hereby permanently restrained against interfering with the plaintiffs' ownership of land parcel number Lari/Kirenga/575.
 - e. The 1st defendant shall pay each of the four (4) plaintiffs general damages of Kshs 500,000, together with interest from the date hereof.
 - f. The 1st defendant shall bear the plaintiffs' costs of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 26TH DAY OF SEPTEMBER 2022

B M EBOSO

JUDGE

In the Presence of: -

Mr Maina for the Plaintiffs

Ms Fatma Ali for the 2nd and 3rd defendants

Court Assistant: Sydney

