



REPUBLIC OF KENYA



KENYA LAW
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**Abdirahman & another v Mole (Environment & Land Case
1 of 2019) [2022] KEELC 4833 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 4833 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 1 OF 2019
JO OLOLA, J
SEPTEMBER 22, 2022**

BETWEEN

ALI JUMA ABDIRAHMAN 1ST PLAINTIFF

REHEMA CHARO MUNGUMBA 2ND PLAINTIFF

AND

KADII KAINGU MOLE DEFENDANT

RULING

1. By the Plaint dated February 25, 2019 as filed herein on February 27, 2019, Ali Juma Abdirahman and Rehema Charo Mungumba (the Plaintiffs) pray for orders:
 - (a) That the Title Deed issued to the Defendant on July 20, 2018 in respect of Gede/Mijomboni/888 was fraudulently obtained and the same is hereby cancelled and further that the Defendant is ordered to surrender the same to this Honourable Court or the Kilifi District Land Registrar within 5 days for purposes of having the same destroyed and/or shredded; and
 - (b) That the Defendant be ordered to pay the costs of this suit.
2. Those prayers arise from the Plaintiffs' contention that they purchased the parcel of land known as Gede/Mijomboni/888 from one Charo Mungumba Kombe but he passed away before the transfer was done. The Plaintiffs aver that despite the Defendant's knowledge that pursuant to the said transaction the original title deed for the suit property was placed in the custody of the 1st Plaintiff, the Defendant proceeded on April 10, 2018 to give false information to the Police to the effect that the title was lost. As a result of the false information, the Defendant was issued with a Police Abstract which she used to fraudulently procure another title deed for the suit property on 20th July, 2018.



3. Upon service of the summons, the Defendant did enter appearance but did not file any pleadings herein. Accordingly and pursuant to an order made herein on 4th November, 2019 the suit proceeded by way of formal proof as an undefended claim.
4. In support of their case the Plaintiffs called the 1st Plaintiff as their sole witness. Testifying as PW1, the 1st Plaintiff placed reliance on his written Statement dated February 25, 2019 as filed herein on February 27, 2019. PW1 told the Court the two Plaintiffs purchased the suit property from the late Charo Mugumba Kombe and that they had obtained Land Control Board Consent and executed the transfer forms when the vendor passed away.
5. PW1 testified that following their payment of the full purchase price, the original title to the property was handed over to himself for safe keeping. PW1 further testified that the Defendant was aware of that position as she even testified in another case being Malindi ELC Case No. 48 of 2014 where she confirmed that the title was in PW1's possession.
6. PW1 further testified that despite such knowledge the Defendant proceeded to Malindi Police Station on April 10, 2018 where she gave false information the vendor's house caught fire after his death and the original title for the suit property got burnt in the fire. The Defendant was subsequent to the report issued with a Police Abstract which she used to fraudulently acquire another title for the same parcel of land on July 20, 2018.
7. I have carefully perused and considered the pleadings filed herein by the Plaintiff, his sole testimony as well as the evidence adduced at the trial herein. I have similarly perused the submissions filed herein by the Learned Counsel representing the Plaintiff. Despite entering appearance, the Defendant neither filed any statement of defence nor did she participate in the proceedings herein.
8. The two Plaintiffs herein pray for an order that the title deed issued to the Defendant on July 20, 2018 in respect of the suit property – Gede/Mijomboni/888 was fraudulently obtained and that the same ought to be cancelled. In support of that prayer the Plaintiffs assert that they bought the said parcel of land from one Charo Mugumba Kombe but before they could complete the transfer process, the said vendor passed away.
9. The Plaintiffs told the Court that the Defendant herein was aware of that position and more so the fact that shortly after the Plaintiffs paid the purchase price in full, the vendor handed over the original title for the property to the 1st Plaintiff for safe keeping. They accuse the Defendant of going round their back and proceeding to obtain a Police Abstract to the effect that the original title was lost. They further accuse the Defendant of fraudulently using the Police Abstract to obtain another title in the name of the vendor on July 20, 2018. It is that title that they urge the Court to have cancelled.
10. In support of their case the Plaintiffs have produced copies of the two titles both in the name of the said Charo Mugumba Kombe with one showing it was issued on 24th September, 1992 while the other was re-issued on July 20, 2018. While that points to the possibility of two titles in respect of the suit property, the Plaintiffs have also exhibited proceedings emanating from Malindi ELC Case No. 48 of 2018 in support of their contention that the Defendant was aware the original title was in their custody and that the Defendant had testified as much in the said Malindi ELC Case No. 48 of 2014.
11. I have perused the said proceedings and while indeed there is evidence that the Defendant testified as PW2 in those proceedings and confirmed that the documents were with the 1st Plaintiff, it was also clear to me that the said suit concerned an ownership dispute over the same suit property herein.
12. From the material placed before me, it was apparent that the said suit had been filed by the two Plaintiffs herein against one Winnie Kinyua Karuru who was also claiming to have bought the suit property and



was carrying out construction thereon. Both sides of the dispute had from the proceedings exhibited, testified and closed their respective cases when an application dated October 23, 2017 was filed in the matter.

13. From where I sit it was not clear to me whether a determination had been made in the said suit as to the ownership of the land between the Plaintiffs herein and the said Winnie Kinyua. Given the existence of the said suit, it was incumbent upon the Plaintiff to make a full disclosure on the position of the matter to avoid a situation where any orders issued herein were misconstrued by either side of the dispute.
14. As it were Section 6 of the *Civil Procedure Act* bars this Court from proceeding with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or parties under whom they or any of them claim, litigating under the same title.
15. In the circumstances herein I think it is only fair that these proceedings be stayed pending conclusion of the suit earlier on filed by the Plaintiffs and which appear to me to be capable of resolving the dispute herein. I so order.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYERI VIA MICROSOFT TEAMS THIS 22ND SEPTEMBER, 2022.

In the presence of:

Mr. Mwadilo for the Plaintiff

No appearance for the Defendants

Court assistant - Kendi

J. O. Olola

JUDGE

