



1. Land and Environmental Law Division
2. Subject of main suit : Land

LR Kiambu Municipality Block 111/163 Fraud

(i) Fake documents and impersonation

of plaintiffs by another who transferred land in question to defendant.

(ii) Three persons arrested and charged in the Magistrate court:-

- a) One passed away
- b) Another imprisoned for 2 years.
- c) and the last given a non custodial sentence

(iii) Plaintiff files civil suit to have property revert back to him from defendant.

3. Defendant served - absent

Exparte hearing

4. Held

1. Proof of fraud established

2. Order property to revert to the plaintiff and all entries on or after October 2001 be cancelled and the proper owner be **Amos Muthamia Mbui Igweta** as per title deed

5. Case law - nil
6. Statue law

Section 34 Evidence Act Cap 80

6. Advocate

P.M. Kiura instructed by Riunga Raiji & Co. Advocates for the plaintiff/ present

Steve Kioni Kinya the defendant in person/ absent

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT 1494 OF 2007

AMON MUTHAMIA MBUI IGWETA.....PLAINTIFF

VERSUS

STEVE KIONI KINYA.....DEFENDANT

JUDGEMENT

I: Background

1. Amon Muthamia Mbui Igweta the plaintiff herein is the registered owner of LR Kiambu Municipality Block 111/163. He holds title for this land and has produced it to court as evidence.
2. One day he went to visit his property when he discovered that the same had trespassers on. He made enquiries and discovered from his neighbours, that it was alleged that he sold the said piece of property. He then made contacts with the people on the ground and discovered that one, Steve Kioni Kinya, was the owner of the property. (The defendant herein). He made contacts with the defendant and between the two of them and the police were able to trace the agent who sold the land – herein described as accused No 3, the person who impersonated the plaintiff, had referred to accused No.1 and the person who the 1st defendant led to where moneys and goods were recovered. The police confiscated these.
3. The three accused were charged with the offence of “making document without authority with intent to deceive” under Section 35 (a) & (b), Penal Code. They were charged with “Forgery” contrary to Section 349 Penal Code and charged with “obtaining moneys” by false pretences.
4. The plaintiff herein produced the proceedings of the court, which proceeding duly noted as the judgment of the court is used under section 34 of the Evidence Act, namely, that the same evidence law is duly used in the civil court, may be indeed used in a subsequent court and witness need not attend.
5. The plaintiff filed this suit. The defendants and or his representative did not attend court nor entered appearance. The explanation given by the plaintiff, is that the said defendant, on being refunded his portion of funds of Kshs.92,000/=, taken from the account duly of the 1st accused who impersonated the plaintiff was not seen since. It was the 1st accused who on impersonating the plaintiff represent fake ID land and transfer documents that the land was subsequently transferred to the defendant. The said 1st accused died in remand after his arrest. The defendant has not been seen since.

II Opinion

6. In this matter herein the said plaintiff has proved that his property land parcel LR Kiambu/Municipality Block 111/163 was transferred illegally by way of fraud to the defendant.
7. The Commissioner of Lands employee and or servant attended court to prove that the lands department effected the transfer based on the fake documents.
8. There is therefore nothing left in this case, save to rectify the registry records and order for the cancellation of the transfer registered on 29 January 2007 of Kiambu Municipality Block 111/163 and restore herein the said title to the plaintiff Amon Muthamia Mbui Igweta the correct owner herein.
9. I award the costs of this suit to the plaintiff

DATED THIS 17TH DAY OF APRIL 2008 AT NAIROBI

M.A. ANG’AWA

JUDGE

P.M. Kiura instructed by Riunga Rainji & Co. Advocates for the plaintiff- present

Steve Kioni Kinya the defendant in person absent