



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Election Case 1317 of 2007

ETHAN HIRAM IRUNGUPLAINTIFF

V E R S U S

MERAB ANYANGO POCHEDEFENDANT

J U D G M E N T

I Background

1. Ethan Hiram Irungu a male African adult filed this suit on 23rd October, 2006 alleging fraud against the defendant herein Merab Anyango Poche concerning land parcel title Nairobi Block 110/343 (suit land).
2. The plaintiff was the registered proprietor of the suit land as of 6th December, 1991. His residence in England UK and proceeded there since that year. He is in gainful employment as an accountant.
3. On the recent visit to Kenya he discovered that the suit land was transferred to the defendant who now held a new title. He still had his original title in his possession.
4. The Plaintiff filed suit alleging fraud against the defendant who may have acted with others not before the court to fraudulently acquire the said suit land.
5. The defendant entered appearance and filed defence and counter claim. She denied the allegations and stated the plaintiff has been threatening her to vacate.

II: Trial

6. Both the parties gave evidence. The plaintiff claimed that he was resident in England. He was there for so long that in 1997 his passport had expired. It was not physical possible for him to be in Nairobi to sell the land and transfer his property. When the defendant showed him her documents of the transfer in his name, an ID card in his name that was given to the defendant by the advocate he denied all this. He denied he had signed any transfer forms.
7. The defendant stated she used to work for a bank. Often she and presumably her colleagues, would take a bank loan and would accordingly purchase property from the bank. The bank would do all the paper work without her even seeing the seller. She would thereafter, on leaving the bank, purchase property through the news papers. She saw the suit land advertised for sale. She then applied for the same through the agents of the owner whom she throughout represented Ethan Hiram Irungu all along.
8. She used one lawyer to act for her and
Ethan Hiram Irungu. The transfer was made on her paying the purchase price.
9. She made no development to the property until much later when she began to construct a house. She was stopped by the plaintiff who claimed ownership.

10. She counter claimed and asked for an injunction against the plaintiff who has been sending her threats on the said land.

11. The defendant produced the copies of the ID card belonging to the alleged Ethan Hiram Irungu. She had a sales agreement which signature did not correspond with the plaintiff's signature in the passport.

12. An interesting thing that has been brought up by the defendant is that in all this transaction she never physically met the seller one Ethan Hiram Irungu. She said she was so used to transact the way she used to in the bank where all the signatures would be obtained in the absent of parties.

13. I am herein required to rule as to whom out of the two are the rightful owner of the parcel of land.

III: Admitted facts

14. The parties admitted to the following facts on 23rd July, 2008.

“That the suit property be and is hereby identified as Nairobi Block 110/343.

That as at 28th October, 1997 the title was registered in the name of the plaintiff Ethan Hiram Irungu.

That the title was on 28th October 2007 issued by the Registrar of Titles.

That at the filing of the suit the defendant had started development of the suit property”.

IV: Findings

15. After trial I would find the following facts have been established as per the agreed issued between the parties:-

16. The plaintiff was a registered absolute proprietor of land parcel Nairobi/Block 110/343 as of 6th December, 1991.

17. At no time did the plaintiff advertise the suit property for sale whereupon a sale transaction was said to have been transacted between the plaintiff and defendant. There was never any agreement between the plaintiff and defendant and such agreement of 23rd October, 1997 allegedly executed by the plaintiff has been denied. This is on grounds that the plaintiff was in the UK and had not been in Kenya to actually execute such transaction.

18. Consequently the plaintiff never received any sum of money for the transaction. The defendant said she paid the advocates who represented both the seller and herself. These advocates never appeared to court to testify as to whom they actually paid or dealt with. The defendant never reported this matter to the police as she said her advocate did. No outcome, investigations or arrest has been tendered to court.

19. This court has shown that the plaintiff has proved beyond any reasonable doubt that he was not the one and the same person who transacted business with the defendant.

20. Fraud has been established. The registration of the defendant as the absolute proprietor of the suit land was illegal unlawful and unprocedural.

21. The defendant cannot claim to be an innocent bonafide purchaser for consideration without notice of fraud. I nonetheless looked at the manner she under took the transaction. She dealt with agents without proof of authority. The seller was never introduced to her. All she had was an ID card of a 1945 year old man named Ethan Hiram Irungu, whose picture on the ID card was totally different from the plaintiff. The ID card most certainly is a forgery before court.

22. The defendant did not take precaution to verify the person she was entering into the sale agreement. Her advocate acted for both the alleged seller and the buyer (the defendant). The rules in Kenya have now changed that each party must have a separate advocate. If this had been the case in 1997 the anomaly would have been caught.

23. I hold that the defendant is not an innocent buyer/purchaser for consideration without notice of fraud.

24. I would accordingly enter judgment for the plaintiff as prayed and dismiss the counterclaim.

25. In summary

25.1 The defendant is to vacate the suit premises within 30 days.

25.2 That the defendant is to demolish any

construction on the ground.

25.3 This court directs the Chief Land Registrar to

rectify the register by cancelling the entries of title Nairobi/Block 110/343 pursuant to the transfer of 24th October, 1997. That the title on being cancelled to the defendant be reissued to the plaintiff.

25.4 I make no awards for damages because the trespass was not known to the defendant until 2004 when the suit was filed.

25.5 I award the costs of this suit to the plaintiff to be paid by the defendant.

DATED THIS 29TH DAY OF JULY 2008 AT NAIROBI

M. A. ANG'AWA

JUDGE

A.J. Abwani nstructed by Maina Wachira & Co. Advocates for the plaintiff – present

E.J. Amandi Instructed by Keceyo & Amadi Advocates for the defendant - present

Ambwani