



REPUBLIC OF KENYA



**Mboro v Tokoin & 3 others (Environment & Land Case 944 of 2017)
[2022] KEELC 13614 (KLR) (12 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 13614 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 944 OF 2017
MN GICHERU, J
OCTOBER 12, 2022**

BETWEEN

MARY WARIARA MBORO PLAINTIFF

AND

TITUS TOKOIN 1ST DEFENDANT

GEORGE MBUGUA 2ND DEFENDANT

KAJIADO LAND REGISTRAR 3RD DEFENDANT

MENETO SIMINKOR OLENGURRO 4TH DEFENDANT

JUDGMENT

1. Mary Wariara Mboro, the Plaintiff, seeks the following orders against Titus Tokoin, George Mbugua, Kajiado Land Registrar and Meneto Siminkor Olungurro the first, second, third, and fourth Defendants respectively;
 - a. An order restraining the Defendants jointly and severally herein either by themselves, their servants and or any other persons drawing benefits and or employees and or interests from trespassing and or dealing in any way or form on the suit property being Title No. Kajiado/Kisaju/2055 and Kajiado/Kisaju/2056 (suit land).
 - b. An order directing the Defendants jointly and severally, their agents, employees and or their servants and or any person drawing benefits and or interests from the suit land.
 - c. Costs of this suit.
 - d. An order of permanent mandatory injunction, directed to the Land Registrar, compelling him to remove the caution against the suit land.
 - e. A declaration that the Plaintiff is the registered owner of the suit land.



This is as per the re-amended plaint dated 18th October, 2019.

2. The Plaintiff's case is as follows. She is the registered proprietor of the two suit parcels which she purchased from the fourth Defendant in the years 2002 and 2004.

The purchase was through the Plaintiff's late mother, Ann Wanjiku Mboro. The transaction was completed successfully and the Plaintiff issued with title deeds for the two parcels.

3. The Defendants unlawfully attempted to change ownership of the suit parcels without the knowledge of the Plaintiff. When the Plaintiff discovered the interference with the register, she made a report to the criminal investigations department who carried out investigations and established the fraud. The result was the restoration of the land records that had been interfered with by the Defendants.

The fourth Defendant went to court behind the back of the Plaintiff and alleged that the sale between her and the Plaintiff was incomplete. She obtained an order dated 4th February, 2014 cancelling the Plaintiff's title deed to the suit parcels.

The fourth Defendant obtained title deed for the suit parcels which bore the same date as the court order. This was very suspicious. Even more suspicious, was the fact that searches carried out on 5/10/2015, 27/11/2015, 3/12/2015 and 21/8/2018, showed the Plaintiff as the registered owner of the suit land.

This was proof that the court order and the title deeds in the names of the fourth Defendant were all forgeries.

4. In support of her case, the Plaintiff filed the following evidence.
 - i. Witness statement dated 11/12/2015.
 - ii. Copy of certificate of official search for L.R. Kisaju 2056 dated 27/11/2015, showing the Plaintiff as the registered proprietor
 - iii. Copy of receipt dated 27/11/2015.
 - iv. Copy of the Title Deed for L.R. 2056, in the name of the Plaintiff dated 6th December, 2004.
 - v. Copy of gazette notice no. 4434 dated 9th June, 2015 issued by the Land Registrar, Kajiado proving loss of the register of the suit parcels and giving notice of issue of a new register.
 - vi. Copy of letter by County Criminal Investigation Officer, Nairobi to Land Registrar, Kajiado saying that the register for the suit parcels had been interfered with and needed to be reconstructed.
 - vii. Copies of pictures showing structures on the suit land.
 - viii. Copy of mutation form for L.R. Kisaju/1195 which gave rise to the two suit parcels and L.R. 2054.
 - ix. Copy of title deed for L.R. Kajiado/Kisaju/20155 dated 19/4/2002 in the name of the Plaintiff.
 - x. Copies of certificates of official search for the suit parcels dated 5/10/2015, 27/11/2015, 3/12/2015 and 18/6/2012 all in the names of the Plaintiff.
 - xi. Correspondence between the CID Nairobi and the Chief Land Registrar, showing how the land records for the suit land were interfered with, and then restored on intervention of the police and the Chief Land Registrar.



- xii. Witness statement by Virginia Gakuhi dated 3/9/2019.
 - xiii. Further witness statement by the Plaintiff dated 18/10/2019.
5. The first and second Defendants appointed Kang'oli and Company Advocates, who filed a notice of appointment on 27/1/2016. Nothing else was ever filed by or on behalf of the two Defendants.
- The third Defendant did not file any memorandum of appearance, defence or any pleadings.
- The fourth Defendant, through counsel on record filed a memorandum of appearance on 24/5/2017 and a written statement of defence and counter claim on 27/2/2018.
- In the defence, the fourth Defendant avers that there was a sale agreement between her and the Plaintiff's mother, one Ann Wanjiru Mboro. The said agreement did not materialize for nonpayment of the purchase price. She challenges the registration of the Plaintiff as the owner of the suit land. Pursuant to this, she filed Miscellaneous Application Numbers 5 and 6 of 2014 at the Principal Magistrates Court at Kajiado, whereby the title deeds issued to the Plaintiff for the suit parcels were cancelled and the fourth Defendant registered as the absolute proprietor of the suit parcels.
- Later on, the Plaintiff filed ELC Case No. 619/2015 at Milimani High Court against Simon Meneto Olunguro which she later withdrew.
- According to the fourth Defendant, the action of reconstructing the register for the suit parcels at the instigation of the Plaintiff, is illegal and irregular because the fourth Defendant is the legitimate owner pursuant to the order issued by the court in February, 2014.
- In the counterclaim, the fourth Defendant seeks the following orders;
- a. A declaration that L.R. Kajiado/Kisaju/2055 and 2056 were illegally and irregularly acquired by the Plaintiff.
 - b. A cancellation of the land register for L.R. Kajiado/Kisaju/2055 and 2056 in the name of the Plaintiff.
 - c. An order do issue compelling the District Land Registrar, Kajiado to correct the land register for the two suit parcels to reflect the fourth Defendant's name.
 - d. An injunction restraining the Plaintiff either by herself, her agents and or servants from entering, transferring, selling, alienating, encumbering or in any way parting with possession or any further dealings with the two suit parcels.
 - e. Costs of the suit.
 - f. Any other relief which the court will deem fit and suitable to grant.
6. In support of her defence, the fourth Defendants filed the following evidence.
- i. Copy of the order dated 4/2/2014 in Miscellaneous Application Number 5 of 2014, at Kajiado Principal Magistrate's Court which revoked the title deeds issued to the Plaintiff in respect of the suit parcels.
 - ii. Copy of title deeds for L.R. 2056 dated 4/2/2014 in the name of the fourth Defendant.
 - iii. Copy of title deed for L.R. 2055 in the name of the fourth Defendant and also dated 4/2/2014.
 - iv. Copies of register for the two parcels both dated 28/8/2001, showing the fourth Defendant as the registered proprietor thereof.



- v. Copies of certificates of official search for the two parcels dated 27/11/2015 and 5/10/2015, showing the Plaintiff as the registered proprietor.
 - vi. Copy of gazette notice no. 4434 of 19th June, 2015, issued by the Land Registrar, Kajiado, seeking to reconstruct the missing registers for the two parcels.
 - vii. Copies of correspondence between the DCIO Nairobi, the District Land Registrar, Kajiado, and the County Land Registrar, Kajiado, concerning the fraud in respect to the registers of the two parcels.
7. At the trial, only the Plaintiff's representative and the fourth Defendant testified. Each one of them adopted their evidence filed earlier. They were then cross-examined by the counsel for the adverse party.
 8. Even though the fourth Defendant's counsel was to file written submissions by 24th May, 2022, no such submissions had been filed by mid-August, 2022.

The Plaintiff's counsel filed his submissions on 14th July, 2022.

9. In his submissions, the Plaintiff's counsel identified only one issue for determination, namely; Whether the Plaintiff is the registered proprietor of the two suit parcels and who deserves protection under Sections 24, 25 and 26 of the *Land Registration Act*.
10. I have carefully considered all the evidence adduced in this case by both sides bearing in mind the burden on the Plaintiff to establish her claim against the Defendants on a balance of probabilities.

Likewise, the fourth Defendant has the burden of proving her counterclaim on a balance of probabilities.

I find that the following issues come up for determination;

1. Whether the Plaintiff's title to the two parcels has been proven to have been acquired unlawfully, unprocedurally or through a corrupt scheme?
 2. Whether the decree in Miscellaneous Applications Numbers 5 and 6 of 2014, Principal Magistrates Court, Kajiado, were ever implemented?
 3. Whether sufficient material has been presented to cause the cancellation of the registers for the parcels?
11. On the first issue, I find that the Plaintiff is the registered proprietor of the suit parcels. In this regard, I rely on the copies of certificates of official search produced by the Plaintiff as evidence.

These certificates are not disputed by the fourth Defendant. Instead, she has confirmed them by filing two such certificates dated 5/10/2015 and 27/11/2015, showing the Plaintiff as the registered proprietor of the suit parcels.

As correctly submitted by the Plaintiff's counsel, the effect of registration of the Plaintiff as the proprietor of the parcels vests in her rights and privileges, which cannot be defeated except under certain circumstances. Such rights are conferred under **Sections 24 and 25** of the *Land Registration Act (Act No. 3 of 2012)*.

The rights can only be defeated as envisaged under Section 26(a) and (b) of the same Act, that is to say,

- a. On the ground of fraud or misrepresentation to which the person registered is proved to be a party or



- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- 12 In this case, the burden would be on the fourth Defendant to prove the above.
- In this case, I find that she has not proved any fraud, misrepresentation, illegality, failure of procedure or corruption on the part of the Plaintiff. Instead, it has been proved that she sold the suit parcels to the Plaintiff and that, she executed the mutation form that partitioned the original parcel.
- It is not credible that she gave out her title deed to the Plaintiff's mother before she had been fully paid for the suit land. It is not credible that she cannot even remember how much was paid to her and how much the balance was.
- 13 I am satisfied that the Plaintiff acquired good title to the land and this title has not been impeached at all.
- On the second issue, I find that the decree in the two Miscellaneous Applications was never implemented. Had it been implemented, the registers for the two parcels would be reflecting the fourth Defendant as the registered proprietor of the same.
- It was incumbent upon the fourth Defendant to follow up and have the decrees implemented. Failure to have the decree implemented casts serious doubt on its authenticity especially when coupled with a copy of title deed which is not supported by the register.
- 14 The copy of title deed produced by the fourth Defendant and dated 4/2/2014 is very suspicious considering it has the same date as the order issued by the court. No effort was made by the fourth Defendant to explain this serious flaw on the part of his documents.
- On the third and final issue, I find that no evidence has been presented before court by the fourth Defendant to warrant the cancellation of the Plaintiff's land documents. The fourth Defendant was expected to adduce sufficient evidence to enable the court upset the status quo obtaining currently in the land registers for the two parcels.
- 15 For the above stated reasons, I enter judgment for the Plaintiff against all the Defendants jointly and severally as prayed for in the plaint.
- 16 Secondly, I dismiss the fourth Defendant's counterclaim against the Plaintiff.
- I award costs of the main suit and the counterclaim to the Plaintiff.
- Order accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 12TH DAY OF OCTOBER, 2022.

M.N. GICHERU

JUDGE

