

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

Civil Suit 50 of 2006

HORST TAUBELPLAINTIFF

VERSUS

MARY MUTHONI WACHIRADEFENDANT

J U D G M E N T.

In a plaint dated 22nd March 2006, Horst Taubel, the plaintiff herein, sought for the following judgment interalia against Mary Muthoni Wachira, the defendant in this matter:

(i) *An order restraining the defendant by herself, her servants, agents and or employees from evicting, harassing, trespassing, selling transferring or in any manner interfering with the plaintiff's parcel of land known as plot Kwale/Diani/513 together with all the developments therein.*

(ii) *An order for rectification of the register by directing the cancellation of the name of defendant and placing in her place the name of the plaintiff.*

(iii) *Costs plus interest.*

The plaint plus the summonses were served upon the defendant who instructed the firm of Ndegwa & Associates to enter appearance on 28/6/2006. By then judgment in default of appearance had been entered on 4/5/2006 hence this suit proceeded for hearing as a formal proof.

The plaintiff testified alone without calling for the evidence of any independent witness. He told this court that Mary Muthoni Wachira, the defendant herein was his girl friend as from the year 2002. They both lived as though they were husband and wife in some premises rented to the plaintiff by one Heinz Klosternitz situate in Ukunda. He said he later bought the property known as Kwale/Diani/513 from Heinz Klosternitz at a price of Kshs.3.65 M. He produced in evidence an agreement they executed on an unspecified date. He said he kept the title in the house and later on realized that the same had been stolen in the month of December 2005. He said he was prompted to visit Kwale District Land's Office to make inquiries and upon conducting a search he discovered that the defendant had obtained title and had it registered in her name in his place. He claimed he did not authorize the transaction. He accused the defendant of having cheated that he had transferred the property to her at a price of Kshs.600,000/-.

The issues in this suit were not drawn up. From the plaint it is clear that the plaintiff has claimed that the defendant fraudulently obtained title to the land. In fact he has given twenty four (24) particulars of fraud illegality, mistake and misrepresentation in paragraph 9 of the plaint. He has not tendered any evidence to prove any of those particulars in his testimony. The agreement he produced in his evidence is not dated nor stamped as required. There is also evidence which indicates that there is a pending suit before the Kwale S.R.M.'s Court between the plaintiff and the defendant. The plaintiff did not shed more light on this suit. It is the submission of Mr. Kiarie Kariuki, learned advocate for the plaintiff that the plaintiff had established that the defendant stole his title and transferred it to himself. He claimed that the property was undervalued and the transfer was a forgery. It must be pointed out that the allegations of forgery, fraud, theft, mistake etc are serious averments which must be strictly proved. The evidence presented by the plaintiff though uncontested do not meet the required standards in civil cases, which in this partisan case must be higher than on a balance of probabilities. The plaintiff did not even establish as to how he acquired plot no. Kwale/Diani/513. He did not lay down the steps he undertook to acquire it

leave alone proving the serious allegations leveled against the defendant. I have come to the final conclusion that the plaintiff has failed to establish his claim. Consequently the suit is hereby ordered dismissed with no order as to costs.

Dated and delivered at Mombasa this 19th day of June, 2007.

J.K. SERGON

J U D G E

In open court in the presence of Mr. Lewa h/b Mr. Kiarie