



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**OF KISII**

**Civil Case 125 of 2004**

**1. PETER NYAKWAYE RIOGI )**

**2. AMOS NGOGE ) ..... PLAINTIFFS**

**VERSUS**

**HENRY JOHN ITUMBO ..... DEFENDANT**

**JUDGMENT**

The two Plaintiffs sued the defendant seeking for an order to cancel registration of land No.WANJARE/BOKEIRE/3597 and the same to be registered in the name of the 2<sup>nd</sup> Plaintiff.

The defendant filed a defence denying the claim. He however failed to do discovery and an application was made to have him do so.

The court on 26<sup>th</sup> April 2005 ordered the defendant to do discoveries within 30 days and in default the judgment to stand struck out. The matter proceeded for formal proof.

PW1 PETER NYAKWAYE the first plaintiff told court that he owed L.R. NO. WANJARE/BOKEIRE/2834. He later subdivided it into 5 portions. The resultant portions were registered as L.R.WANJARE/BOKEIRE/3595-3598. He sold plot No.3597 to the second plaintiff. The defendant was one of the witnesses to their agreement.

However before he could transfer it to the 2<sup>nd</sup> plaintiff, the defendant fraudulently caused it to be registered in his name. He said at one time defendant took him to the land Board cheating him he will assist him to transfer the land to the 2<sup>nd</sup> defendant only to find later that he had the land transferred to himself. He said he never sold any land to the defendant.

The 2<sup>nd</sup> plaintiff confirmed that he bought the piece of land from the 1<sup>st</sup> Plaintiff. He went into occupation of the same. He now lives there with his family.

As I said the defence was struck out and the defendant did not testify.

The evidence of PW1 & 2 is very candid. It is clear that PW1 sold the land to PW2 and not to the defendant. The 1<sup>st</sup> plaintiff produced the sale agreements. Defendant was one of the witnesses at one time.

There was no evidence of sale to the defendant. In fact even in his defence which was struck out he did not state that he bought the suit land.

The land therefore was registered in his name without the consent of

1<sup>st</sup> plaintiff. It must have been registered through fraud.

I therefore find that plaintiffs have proved their case on a balance of probabilities and enter judgment in their favour.

I order the Land Registrar to cancel the registration of parcel No.Wanjare Bokeire/3597 which is in the name of the defendant and register the same in the names of 2<sup>nd</sup> plaintiff AMOS NGOGE.

Plaintiffs will also have costs of the suit.

Dated 19<sup>th</sup> October 2006

**KABURU BAUNI**

**JUDGE**

cc. Mobisa

N/A for Plaintiff

N/A for Defendant