



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

Civil Case 224 of 1999

JOSEPH MUKUNA.....PLAINTIFF

VERSUS

NATIONAL BANK OF KENYA LTD.....1ST DEFENDANT

MARGARET CHELANGAT ONGUTI.....2ND DEFENDANT

VIJAY MORJARIA.....3RD DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

JUDGMENT

The Plaintiff is the registered proprietor of that parcel of land known as **NAKURU MUNICIPALITY BLOCK 15/631** on which he has constructed a residential house which is the plaintiffs family home.

The history of the said parcel of land as I understood it from the evidence adduced in court is that the Commissioner of Lands vide a letter of allotment dated 17th February, 1994 allocated the parcel of land, then known as unsurveyed residential **Plot No. 166 Nakuru Municipality** to one Mr. Moranga Morekwa of P.O. Box 913, Nakuru. The consideration was Kshs.11,040/= which Mr. Morekwa paid to the Government of the Republic of Kenya. On 3rd November, 1994 the Government of the Republic of Kenya granted Mr. Moranga Morekwa a 99 years lease from 1.3.94 at an annual rent of Kshs.1,690/- raisable. The lessee had paid a further sum of Kshs.8,450/=.

The parcel of land had been surveyed as **NAKURU MUNICIPALITY BLOCK 15/631** and a Certificate of Lease issued in accordance with the provisions of the Registered Land Act Cap 300 Laws of Kenya.

On 24/11/94 Mr. Morekwa sold his lease hold interest in the said property to Miss Margaret Muthoni Gikera at a consideration of Kshs.160,000/-

By a sale agreement dated 2/9/97 the said Margaret Muthoni Gikera sold and transferred her interest in the said property to Jane Wanjiku Giromo (the plaintiff's wife) at a consideration of Kshs.400,000/- and a Certificate of Lease in favour of the purchaser was issued on 11th September, 1997.

However, Margaret Muthoni Gikera and Jane Wanjiku Kiromo decided to understate the purchase price by Kshs.200,000/- when they were registering the transfer and I believe that was done deliberately so as to defraud the Government of the Republic of Kenya revenue by way of stamp duty payable on the undisclosed sum of Kshs.200,000/-. That in itself is a criminal offence.

On 4th December, 1997 Jane Wanjiku Kiromo transferred her leasehold interest in the said parcel of land

to the plaintiff and a certificate of lease was issued to him.

The Plaintiff produced certified true copies of the original Green Cards which showed the background in proprietorship of the said property. The Plaintiff thereafter constructed a family house on the property and occupied it in January, 1999.

However, in March, 1999 he received a Notification of Sale of the said property issued by Legacy Auctioneering services on behalf of the National Bank of Kenya Ltd. It indicated that the property was to be sold by public auction on 18th May, 1999 to recover an outstanding sum of Kshs.652,113/40 which had been advanced to one Margaret Chelangat Onguti of P.O. Box 5658 Nairobi. According to the said notification of sale, another parcel of land known as **NAKURU MUNICIPALITY BLOCK 17/230** was also to be sold by public auction.

The plaintiff thereafter proceeded to the Lands Registry to carry out a search on the title to the property and he was issued with a Certificate of Official Search dated 10/5/99 which showed that he was still the registered proprietor of the said property and no encumbrance existed against the title. The Plaintiff then decided to file this suit in court to challenge the threatened unlawful sale of his property. Initially he filed the suit against the first Defendant only but he amended his plaint on 5th July, 1999 to join the other defendants when he realised that the third Defendant was also holding a title deed for the same property, saying that he had bought the same from the second Defendant. However, the Plaintiff withdrew his case as against the first Defendant and the latter also withdrew its counter-claim as against the Plaintiff. The Plaintiff also said that he had no claim against the third Defendant.

The second Defendant did not enter appearance nor file any defence and interlocutory judgment against her was entered. The 4th Defendant, the Attorney General who had been sued as the legal representative of the Commissioner of Lands entered appearance and filed defence but did not attend the hearing despite having been served with a hearing notice.

The third Defendant testified that he purchased the suit premises from the second Defendant for Kshs.200,000/- and she executed a transfer in his favour on 17th June, 1996. He was also issued with a Certificate of Lease on the same day. However, the Certificate of Lease was stolen together with the safe in which it had been kept when the 3rd Defendant's house was broken into and as a result another certificate was re-issued on 20/8/2001.

A certified true copy of a Green Card for the property which he produced showed that on 26/10/9555 the second Defendant was registered as the proprietor of the leasehold interest comprised in the said property. The third Defendant further testified that prior to the purchase of the said parcel of land he had conducted a search at the Lands Registry and the same showed that the property belonged to the second Defendant.

After he was served with court process regarding this matter he carried out another official search at the Land Registry which verified that the said property was still registered in his favour.

The third Defendant further told the court that apart from the certificates of lease which the Plaintiff and himself held, it was obvious that the second defendant had another certificate which she had used to secure the bank facility advanced to her by the first Defendant and he blamed the 4th Defendant for issuing a multiplicity of certificates of lease over the same parcel of land. He said that the current market value of the said plot was Kshs.400,000/- and he produced a valuation report dated 21st October, 2004 prepared by Mr. Joseph M. Inoti of Prime Valuers. He prayed for judgment against the 4th Defendant in the sum of Kshs.400,000/- plus costs and interest or in the alternative allotment of a different plot of the same value.

Having carefully analysed the transactions in this matter and the history of the property in question, I have no hesitation in holding that the Plaintiff is the only lawful registered proprietor of the leasehold interest comprised in the suit property and the other certificates of lease which exist over the same property should be cancelled and I order the Commissioner of Lands to do so promptly. The second and the third defendants are also permanently enjoined from interfering in any way with the plaintiff's quiet

and peaceful enjoyment of the said property. With regard to the third Defendant's claim, he issued a Notice to the 4th Defendant pursuant to the provisions of Order 1 Rule 21 of the Civil Procedure Rules claiming indemnity against the Plaintiff's suit and costs. The indemnity sought was for Kshs.200,000/- as the value of the suit premises.

The third Defendant carried out a search at the lands registry, Nakuru and was issued with a certificate of an official search certifying that the second Defendant was the registered proprietor of the suit premises and so he proceeded to purchase the leasehold interest comprised in the said property from the second defendant. Thereafter the third defendant obtained a certificate of lease of the same showing that he was the registered proprietor of the leasehold interest in the property for a term of 99 years from 1st August, 1994. He was an innocent purchaser for value and he was definitely misled by the information which he got from the Lands Registry. Section 144(I) of the Registered Land Act provides as follows:-

“subject to the provisions of this Act and of any written law relating to limitation of actions, any person suffering damage by reason of –

(a) any rectification of the register under this Act

(b) any mistake or omission in register which cannot be rectified,

(c) any error in a way of extract from the register or extract from any documents

shall be entitled to be indemnified by the Government out of money provided by the legislature.

There is no doubt that the third Defendant suffered damage because of the state of affairs created by the fourth Defendant knowingly or negligently by opening three different registration cards for the same property. The third defendant is therefore entitled to compensation by the 4th Defendant in the sum of Kshs.200,000/- plus interest at court rates with effect from 17th June, 1996 when he was registered as proprietor of the suit property. He is also entitled to the costs of the suit. I therefore issue the orders accordingly.

DATED, SIGNED & DELIVERED at Nakuru this 17th day of December, 2004.

DANIEL MUSINGA

JUDGE

17/12/2004