



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CIVIL SUIT NO. 191 OF 1998**

LINUS NYABERA ODINGA .....PLAINTIFF

VERSUS

RAPHAEL KIPSOI KORIR)

NATIONAL BANK OF KENYA LIMITED)

MUNICIPAL COUNCIL OF NAKURU) .....DEFENDANTS

**JUDGMENT**

On May 18, 1998, the Plaintiff filed this suit against the three Defendants seeking Judgment as follows:

“(i) General Damages;

(ii) A declaration that ... (he) is the lawful and legal proprietor of Title Number NAKURU MUNICIPALITY BLOCK 15/415 (hereinafter referred to as “the suit land”)

(iii) (A permanent injunction against the Defendants from dealing with the suit land)

(iv) (Alternatively Kshs. 1,650,000/=)

(v) Costs and interest”

The Plaintiff’s case is that he is the legal owner of the suit land and has been in possession of the same since 1994 when he purchased it. At paragraph 6 (six) of his Plaintiff, the Plaintiff alleged that in 1992 the 3rd Defendant “*unlawfully and irregularly purported to sign a lease in favour of the First Defendant*” in respect of the suit land notwithstanding that the same had not been allocated to that Defendant. At paragraph 7 (seven) of the same Plaintiff, the Plaintiff alleged that the 1st Defendant had unlawfully and fraudulently caused the suit land to be registered in his name and that in 1993 he fraudulently caused the same to be charged to the 2nd Defendant. The particulars of the 1st Defendant’s fraud were set out as follows:

“(a) He exerted undue influence in his capacity as the 3rd Defendant’s mayor so that ... (the suit land) was unlawfully registered in his name;

(b) He caused a lease to be irregularly executed in his favour when he knew the subject plot had not been allocated to him

(c) He caused the Land Registrar to issue to him a Certificate of Title in respect of the subject plot notwithstanding that the plot had not been allocated to him

(d) He obtained a loan from the Second Defendant on the security of the subject plot without disclosing to the Second Defendant that the same belonged to somebody else.”

The 1st Defendant did not enter appearance in the case although he was duly served with the Summons to Enter Appearance. The 3rd Defendant on its part entered appearance on May 22, 1998 through J. K. Ayusa & Company Advocates but did not file a defence in the matter. Only the 2nd Defendant presented its defence and participated in the proceedings before me.

What really prompted this case was an advertisement which appeared in the Daily Nation of May 9, 1998 in which the suit land was advertised for sale by public auction on May 25, 1998 in exercise, no doubt, of the 2nd Defendant’s statutory power of sale under a charge between it and the 1st Defendant.

At the hearing before me, it emerged that the 3rd Defendant is the absolute registered proprietor of the suit land. However, both the Plaintiff and the 1st Defendant have Certificates of Lease over that property. The trial of this case, therefore, revolves around the question as to who, between the Plaintiff and the 1st Defendant, is the lawful owner of the suit land.

Mr. Andrew Akello (DW 3) who is the District Land Registrar in whose jurisdiction the suit land fell conceded that this could be a case of parallel or double registration. However, looking at the case, it is curious that the 1st and 3rd Defendants who were at the centre of the Plaintiff’s claim did not bother to dispute the Plaintiff’s case. Whatever testimony was proffered by the 2nd Defendant, there is nothing to controvert the Plaintiff’s case that the 1st Defendant, unlawfully employed his authority, to obtain the registration of the suit land in his name and charged it to the 2nd Defendant possibly to frustrate the Plaintiff’s rights. Is it no wonder that he did not bother to settle the account with the 2nd Defendant to whom he had charged the suit land.

The Plaintiff and the 1st Defendant both hold documents of title over the suit land. Both titles appear on their face to be regular. However, the Plaintiff does not only hold a document of title but is in actual occupation of the suit land. The 2nd Defendant bank, who is not to blame in any way has been a victim of the problem in the case. However, its interest in the suit land is purely pecuniary unlike the Plaintiff who said, and that was not controverted, that the suit land was also his home. If he loses it, he will lose much more than the 2nd Defendant which is a Bank, and which has alternative recourse against the 1st Defendant, with whom it had numerous transactions. The 2nd Defendant may also have a claim for indemnity under the Registered Land Act (Cap 300).

I, therefore, enter Judgment in favour of the Plaintiff in terms of prayers (ii) and (iii) of the Plaint. On that finding, the Plaintiff has not suffered any special damage but I award him Kshs. 20,000/= as nominal damages against the 1st and 3rd Defendants only. The 1st and 3rd Defendants shall also be liable for the costs of the Plaintiff. The 2nd Defendant shall bear its own costs.

**Dated and Delivered at Nakuru this 24th day of June, 2003.**

**ALNASHIR VISRAM**

**JUDGE**