



**REPUBLIC OF KENYA  
IN THE HIGH COURT**

**AT NAIROBI  
MILIMANI LAW COURTS**

**CIVIL CASE NO. 2894 OF 1993**

**IN THE MATTER OF AN APPLICATION BY CHANDRAKANT  
PREMCHAND DODHIA**  
**AND**  
**IN THE MATTER OF LAND PARCEL NUMBER L.R. NO. 1186  
EASTLEIGH SECTION 111 NAIROBI**

**CHANDRAKANT PREMCHAND DODHIA.....APPLICANT**

**-VERSUS**

**FRANCIS NGATIA THEURI.....1ST RESPONDENT**

**THE REGISTRAR OF TITLES.....2ND RESPONDENT**

**ALIMA MOHAMMED KHANOON.....3RD RESPONDENT**

**RULING**

By an Originating Summon dated the 10th June, 1993, the applicant is seeking Orders to have the transfer dated the 24th April, 1991 of the plot L.R. No. 1186 Eastleigh Section 111 Nairobi be cancelled and the Registrar be ordered to reinstate Nathoo Gospar Dodhia now deceased as the owner.

The application is supported by an affidavit sworn by Premchad Dodhia who is the administrator of the estate of the deceased, Nathoo Gospar Dodhia.

The deponent in this affidavit together with the evidence he gave in court gives the details which gave rise to these proceedings. The facts are that the plot in dispute belonged to the deceased having bought it in 1948.

The plot remained the property of the deceased until his death on 5.5.1971. The applicant was subsequently granted Letters of Administration to the estate. He later found that the plot had been transferred to Alima Mohamed Khanon on 26th April, 1991. Alima Mohamed Khanon subsequently transferred the plot to the 1st Respondent on 23-12-1991.

Examination of the transfer of 26.4.91 to the 3rd respondent shows that the transfer was executed by 4 persons. This transfer cannot be genuine because:-

First, the owner of the plot at the time when the deceased passed away was one person who was the

deceased.

Secondly, the applicant was granted the Letters of Administration on 26.6.1991 by which time the property had been transferred and the owner had died. It was only the applicant who had obtained the Letters of Administration who could have executed the transfer.

Thirdly, the fourth person signing the transfer is given as Nathoo Gashar who died on 5th May, 1971.

It is therefore clear that the transfer was fraudulent. In the replying affidavit by the 3rd Respondent Francis Ngatia Theuri, it is contended that he was a purchaser without notice of the defect to the title and that he would suffer loss if the Orders prayed for are granted because he does not know where to find the 3rd Respondent.

It is however to be noted that the applicant had complained to the Principal Registrar of Titles in a letter dated 15.7.1991. The Registrar replied after a period of well over four months contending that the registration was proper. The contents of this letter are intriguing considering what the applicant says in paragraph one of his letter. For the Registrar to give as a reason that the transfer was proper because it was drawn by an advocate is an affront to the existing law which is basic when dealing with the property of a dead person.

Furthermore, notwithstanding the pertinent questions raised by the applicant in his letter the office of the Registrar registered another transfer to the 1st Respondent on 23.12.91.

To start with the anomalies in this transfer are so glaring not to be noticeable by the Registrar or an intending purchaser.

It is the duty of a purchaser to make a search of the property he intends to purchase. If the 1st and 3rd Respondents were prudent in their search they would have noticed that the owner of the property was one and not four. This being the situation I do not accept that the third respondent was a purchaser without notice of the defects in the title. Under section 23 of the registration of titles Act, title to the land can be challenged on grounds of fraud. I find that from the manner in which both the 3rd and 1st Respondents handled the transfer they were parties to the fraud.

After considering the evidence tendered, I find that the plaintiff has proved his case.

There will be judgement for the Plaintiff as prayed for in the Originating Summons. The Plaintiff shall be paid the cost of the suit and interest.

**Delivered and dated at Nairobi this 31st day of January, 2001.**

**KASANGA MULWA**

**JUDGE**