



**Declamatory suit
Plaintiff is rightful owner of land
Exemplary damages.**

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1114 OF 1997

CHARLES WAITHAKA CHEGE PLAINTIFF

VERSUS

JOSEPH MBUGUA KARAN JA DEFENDANT

JUDGEMENT

This is a land matter. A brief fact of the case is as follows:- Charles Waitthaka Chege is the plaintiff in this case. He was the owner of land parcel reference number Nachu/Ndacha/636 and holds the title to it. He later discovered that Joseph Mbugua Karanja had fraudulently registered his name as joint owners with him.

On discovering this he filed this suit and sued the defendant for fraudulently acquiring half share title to his property.

The defendant in his defence of course denied this. His defence was that he and Charles were partners. That Charles was unable to pay the full sum of money to the land department/or municipality.

He met all the expenses. The property was transferred, half share to him so as to off set the amount owned to him. All this was voluntarily done including the Land Board Consent and transfers.

From the documents in the file, and the one produced by the plaintiff's agent, the land was in fact transferred to both parties each owing half share.

During the hearing for the plaintiff, his brother gave evidence on his behalf. He held a power of attorney in which he then stated gave him authority to represent his brother. The court accepted him as a witness. His brother, the plaintiff is said to be in London.

In his evidence PW1 stated that he was informed the property was fraudulently acquired by the defendants. He infact did not in any way know the details of how this happened. He managed to produce his document to court to prove this case.

The defendant did not appear to give evidence. His advocate stated that there was no fraud on the part of the defendant. This in fact was never established by him.

Before me I have agreed issues for determination which I would answer as follows:-

The land Reference number Nachu/Ndacha/636 is at the moment in the name of Charles Waithaka Chege. This is from a land certificate (called Title Deed) dated 20.5.92.

The ownership according to the given card or registration card held at the lands department is that of Karanja Mbugua Joseph and Charles Waithaka Chege. This is from a land certificate (called title deed) dated 20.5.92. The ownership according to the given card on registration card held at the lands department is the Karanja Mbugua Joseph and Charles Waithaka Chege held each in half share.

The only restraint being that there be no dealing in land until the said main title is then surrendered.

According to this record the land is held in equal 1/2 share by both the plaintiff and defendant.

Issue No.2

The defendant, Joseph Mbugua Karanja was registered as coowner. The question arises whether this was obtained fraudulently?

The one who alleged this is the plaintiff. He must therefore prove that fraud. There has been no evidence before me to indicate that fraud was used to obtain the defendant's registration.

No one from the lands department was called nor was there anyone from the land consent Board called to signify fraudulent transfer. Issue No.3 The court is therefore not obliged to rectify the register.

Issues No.4 and 5

The plaintiff is not entitled to exemplary damages from the defendant as none has been proved.

I dismiss this suit with costs to the defendant.

Dated this 5th day of October 2000 at Nairobi.

M.A. ANG'AWA

JUDGE