



**Nduati v Mureithi & another (Environment & Land Case
E58 of 2022) [2024] KEELC 470 (KLR) (5 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 470 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E58 OF 2022
LA OMOLLO, J
FEBRUARY 5, 2024**

BETWEEN

JOSEPH KAGERA NDUATI PLAINTIFF

AND

ANTHONY MUTHOTH MUREITHI 1ST DEFENDANT

LAND REGISTRAR NAKURU COUNTY 2ND DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit vide the Plaint dated 17th October, 2022.
2. The Plaintiff avers that he holds the original title deed to land parcel No. Mau Summit/Molo Block 1/2223 (Mutirithia).
3. The Plaintiff also avers that in April 2022, he wanted to use the suit property as security for a criminal case and so he conducted a search which search revealed that the 1st respondent was the registered owner of the suit property.
4. It is the averment of the Plaintiff that he reported the matter to the police and when the 1st Defendant was summoned, he denied having knowledge of the suit property.
5. It is also the averment of the Plaintiff that the 1st Defendant is ready to enter into a consent to have the records at the Ministry of Lands rectified to reflect the Plaintiff as the lawful owner.
6. The Plaintiff then sets out the particulars of fraud on the part of the Defendants and prays that judgement be entered against them for;
 - a. A declaration that the plaintiff is the registered owner of the parcel of land known as Mau Summit/Molo Block 1/2223(Mutirithia).



- b. Cancellation of any other title issued to the 1st Defendant over the said parcel of land.
- c. Rectification of the Land Register to reflect the Plaintiff as the registered owner and not the 1st Defendant.
- d. Costs.
- e. Any other relief that this court may deem fit to meet the ends of justice.

Factual Background.

- 7. An affidavit of service was filed on 29th November, 2022. It is sworn by Moses Njoroge on 25th October, 2022. It shows that the Defendants were served with summons and pleadings in on 25th October, 2022.
- 8. This suit was mentioned severally and in all these instances, there are affidavits of service on record that show that the Defendants were served and had knowledge on these proceedings. Particularly, the affidavit of service sworn by Moses Njoroge on 25th May, 2023 and filed on 17th July, 2023 shows that the Defendants were served with a hearing notice on 25th May, 2023.
- 9. Despite service, none of the Defendants entered appearance or participated in the hearing on 18th July, 2023.

Plaintiff's Evidence.

- 10. Joseph Kagera Nduati testified as PW1. He prayed that his witness statement dated 17th October, 2022 be adopted as part of his evidence, which prayer the court acceded to. He also produced the documents in his list of documents dated 17th October, 2022.
- 11. PW1's evidence is that he went to the Lands Office to conduct a search relating to land parcel No. Mau Summit/Molo Block 1/2223 (Mutirithia). He explained that the said property belonged to him as he had exchanged it with Joseph Kijani Kiptum in the year 2010.
- 12. It was further his evidence that they had gone to a lawyer where they entered into an agreement dated 29th July, 2010 that he would surrender his title and Joseph would also surrender his title. They then paid for both the agreement and the transfer.
- 13. He testified that he was later issued with his title on 7th October, 2015 after engaging a surveyor known as Nyaga and paying the requisite fee.
- 14. It was his testimony that he holds the title deed to the suit property and added that when his son was arrested, he had intention of standing as surety for him and the title of the suit property was to be used.
- 15. He further testified that he was required to attach a search certificate and that when he conducted a search of the suit property, it showed that the suit property was registered in the name of Anthony Muthuthu Mureithi.
- 16. It was his evidence that when he inquired from the Lands Office Nakuru Customer Care Desk, they were not able to give answers on how the suit parcel was registered in the name of Anthony Muthuthu Mureithi.
- 17. It was also his evidence that he was unable to register a caution and he then decided to report the matter to the Molo Police Station where he was given OB No. 24/23/4/22.



18. It was further his evidence that he was referred to Directorate of Criminal Investigations Molo for investigations to be done. The Directorate of Criminal Investigations wrote a letter to Ardhi House Nairobi to allow them access the Lands Office. The said letter was received on 6th May, 2022.
19. He testified that the officers of the Directorate of Criminal Investigations went back with the letter to Molo and were given access to the Land Registry. The District Land Office received the said letter on 18th May, 2022.
20. He also testified that the Directorate of Criminal Investigations requested for information on the following;
 - a. Whether the property existed in the register.
 - b. The particulars of the registered owner.
 - c. Certified copy of the register capturing the suit property.
 - d. Certified copy of the green card.
 - e. Certified copy of documents used to secure the current title deed.
21. He further testified that the Ministry of Lands responded to the said letter and gave the Directorate of Criminal Investigations Molo a copy of the green card and a search which he had in court. The letter stated that they could not find the documents that were used to transfer the land to Anthony Muthutho Mureithi.
22. It was his evidence that the search showed that the suit property was registered in the name of the 1st Defendant while the green card showed that he was issued with a title on 7th October, 2015.
23. It was also his evidence that that the green card further shows, at entry No.4 dated 8th October, that a title deed was issued to Anthony Muthutho Mureithi of ID No. 11723632.
24. It was further his evidence that the Directorate of Criminal Investigations traced the 1st Defendant using his Identity Card and summoned him to their offices to make a statement but the 1st Defendant refused to go stating that travelling to Molo was expensive.
25. He testified that the Directorate of Criminal Investigations informed the 1st Defendant to go to the nearest law firm, swear an affidavit and attach a copy of his identity card and deposit both to the nearest police station.
26. He also testified that the 1st Defendant did as he was requested and deposited an affidavit sworn on 3rd August 2022 at a police station in Kikuyu. The said affidavit was sent to Molo Police Station. He stated that he had the said affidavit in court.
27. He further testified that in the said affidavit, the 1st Defendant disowned the suit property and stated that he did not know him. He also stated that he had no claim over the suit parcel of land.
28. It was PW1's evidence that he later went with the officers from the Directorate of Criminal Investigations to the Lands office to find out the way forward. The Land Registrar informed them that what they had was not enough to transfer the land back to his name.
29. It was also his evidence that the Land Registrar asked him to either get Anthony to sign a consent and surrender the original title or that he approached the court and seek orders of cancellation. He testified that it is upon this background that he decided to come to court.



30. It was further his evidence that before he came to court, he wrote a demand letter to the Defendants. He stated that he did not know Anthony Muthuthu Mureithi before he conducted the search to the suit property and added that he never sold the land to him. He also stated that he had never seen the title deed that was issued to the 1st Defendant and he wondered how the 1st Defendant got the title deed to the suit property without him surrendering his original title.
31. He further testified that he always wondered why the Land Registrar was not able to give him documents pursuant to which he effected transfer to the 1st Defendant. He ended his testimony by praying that the court grants him orders as set out in the plaint.
32. The following documents were marked and produced by the Plaintiff:
- a. A copy of the title deed for Mau Summit/Molo Block 1/2223 (Mutirithia) as Exhibit P1.
 - b. A copy of official search dated 4th April, 2022 as Exhibit P2.
 - c. Demand notice dated 7th October, 2022 issued to the 1st Defendant as Exhibit P3.
 - d. Demand Notice dated 12th October, 2022 issued to the Land Registrar as Exhibit P4.
 - e. Official search issued on 15th July, 2022 as Exhibit P5.
 - f. Green card certified on 18th July 2022 as Exhibit P6.
 - g. An affidavit sworn by the 1st Defendant on 3rd August, 2022 as Exhibit P7.
 - h. Photocopy of 1st Defendant's Identity Card as Exhibit P8.
 - i. Application for caution dated 14th April, 2022 as Exhibit P9.
 - j. A letter dated 6th May, 2022 by the Directorate of Criminal Investigations Molo to the Principal Secretary Ministry of Lands CC to Land Registrar Nakuru as Exhibit P11.
33. This marked the close of the Plaintiff's case.

Issues for Determination.

34. The Plaintiff filed his submissions on 21st July, 2023 while the Defendants did not file any submissions.
35. The Plaintiff gives the background of the suit, relies on Article 40 of *the Constitution*, Sections 24(a), 25(1), 26(1) and 80(1) of the *Land Registration Act* and submits that he has tendered sufficient evidence to show that he is the proprietor of land parcel No. Mau Summit/Molo Block 1/2223 (Mutirithia).
36. The Plaintiff also submits that no explanation has been given as to how the suit property was transferred to the 1st Defendant and so he seeks that the orders sought in the Plaint be granted.
37. The Plaintiff concludes his submissions by relying on the case of Mary Wangui Muthoga vs Samuel Ndung'u Chege & another [2016]eKLR and prays that the Defendants should bear costs of the suit.

Analysis and Determination.

38. After considering the pleadings, evidence and submissions, the two issues that arise for determination are whether the Plaintiff is entitled to the orders sought in the Plaint and who should bear the costs of the suit.



A. Whether the Plaintiff is entitled to the orders sought in the Plaintiff.

39. The orders sought have been set out in the preceding paragraphs. I shall, nonetheless, reproduce them as hereunder;
- a. A declaration that the Plaintiff is the registered owner of the parcel of land known as Mau Summit/Molo Block 1/2223(Mutirithia).
 - b. Cancellation of any other title issued to the 1st Defendant over the said parcel of land.
 - c. Rectification of the Land Register to reflect the Plaintiff as the registered owner and not the 1st Defendant.
 - d. Costs
 - e. Any other relief that this court may deem fit to meet the ends of justice.
40. The Plaintiff's case is that he is the registered owner of land parcel No. Mau Summit/Molo Block 1/2223. It is also the Plaintiff's case that when he conducted a search on the suit property in April 2022, he realized that it had been registered in the name of the 1st Defendant.
41. It is further the Plaintiff's case that the Land Registrar could not trace any documents in support of the said transfer and that the 1st Defendant swore an affidavit declaring that he had no claim over the suit parcel. He prays that the court declares him as the registered owner of the suit property, cancels the title issued to the 1st Defendant and orders the Land Registrar to rectify the Land Register so as to reflect him as owner of the suit parcel.
42. In support of his case, the Plaintiff produced a copy of the title deed for land parcel No. Mau Summit/Molo Block 1/2223 (Mutirithia)(Exhibit P1). The title shows that the Plaintiff was registered as the owner of the suit property on 7th October, 2015.
43. The Plaintiff also produced a copy of official search (Exhibit P2) dated 4th April, 2022 that shows that Anthony Muthutho Mureithi (the 1st Defendant) as the registered owner of the suit parcel.
44. A copy of the letter dated 7th October, 2022 (Exhibit P3) was produced. It is addressed to Anthony Muthutho Mureithi and the subject of the said letter is the suit property. The letter is written by Kamonjo Kiburi & Co. Advocates and it informs the 1st Defendant that the Plaintiff is intending to file a suit to have his registration as the owner of the suit property cancelled. It also informs the 1st Defendant that he shall be required to file a consent cancelling his title and the name of the Plaintiff restored on the green card.
45. A copy of a letter dated 12th October, 2022 (Exhibit P4) was produced. The said letter is written by Kamonjo Kiburi & Co. Advocates and it is addressed to the County Land Registrar, Nakuru County. It informs the County Land Registrar of the Plaintiff's intention to sue them over the registration of the 1st Defendant as the owner of the suit property if the 1st Defendant's name is not cancelled within fourteen days.
46. A copy of a certificate of search dated 15th July, 2022 (Exhibit P5) was produced. It shows that Anthony Muthutho Mureithi was registered as the owner of the suit property on 8th October, 2015 and a title deed was issued the same day.
47. A certified copy of the register (Exhibit P6) was produced.



- Entry No. 1 shows that on 14th June, 2007 Kiptum Keiyo of ID No. 0740828 was registered as the owner of the suit property. Entry No. 2 shows that on 7th October, 2015 Joseph Kagera Nduati was registered as the owner and a title deed was issued on the same date as set out in Entry No. 3. Entry No. 4 shows that on 8th October, 2015 Anthony Muthutho Mureithi was registered as the owner of the suit property. Entry No.5 shows that 8th October 2015.
48. An affidavit sworn by Anthony Muthutho Mureithi (Exhibit P7) was produced. It is sworn on 3rd August, 2022. He makes reference to the entries in the green card and states that he does not know the suit property and neither does he own any land in Molo.
 49. He also deposes that he has never interacted with the Plaintiff and denies having any claim over land parcel No. Mau Summit/Molo Block 1/2223 (Mutirithia).
 50. A copy of the Identity Card for Anthony Muthutho Mureithi (Exhibit P8) was produced. The identity card number is 11723622. The identity card number is the same one as appears on the affidavit sworn by the 1st Defendant.
 51. A copy of an application for caution (Exhibit P9) dated 14th April, 2022 over land parcel No. Mau Summit/Molo Block 1/2223 (Mutirithia) was also produced. It is signed by Joseph Kagera Nduati, the Plaintiff.
 52. A copy of the letter dated 6th May, 2022 was produced (Exhibit P10). It is written by Hassan Yattani the SCCIO Molo (Directorate of Criminal Investigations) and addressed to the Principal Secretary Ministry of Lands and Physical Planning requesting for information on the suit property.
 53. A copy of a letter dated 18th July, 2022 (Exhibit P11) was produced. It is written by Margaret A. Omullo, the District Land Registrar Nakuru and addressed to the Directorate of Criminal Investigations Molo Sub-county. The subject of the letter is the suit property and its states as follows;

“...Forwarded herewith please find certified copy of register and certificate of official search.
There are no other available documents from our custody.”
 54. As noted before, the Defendants did not participate in the hearing of the suit. Therefore, the Plaintiff’s evidence remains uncontroverted. Even though the Plaintiff’s evidence is uncontroverted, the burden of proof is on him and he must discharge it. The court in the case of Kenya Power & Lighting Company Limited vs Nathan Karanja Gachoka & another [2016] eKLR held as follows;

“I am of the opinion that uncontroverted evidence must bring out the fault and negligence of a defendant, and that a court should not take it truthful without interrogation for the reason only that it is uncontroverted. A plaintiff must prove its case too upon a balance of probability whether the evidence is unchallenged or not”
 55. The Plaintiff in his evidence testified that he was the registered owner of land parcel No. Mau Summit/Molo Block 1/2223 (Mutirithia). He also testified that when he conducted a search in April 2022, he was shocked to learn that that the suit property was now registered in the name of the 1st Defendant.
 56. It is his case that he reported the matter to the Directorate of Criminal Investigations who in the course of their investigations wrote the letter dated 6th May, 2022 (Exhibit P10) to the Principal Secretary Ministry of Lands Physical Planning requesting for among other documents, certified copies of documents that were used to secure the current title deed.



57. In response, the District Land Registrar wrote the letter dated 18th July, 2022 (Exhibit P11) where she stated that apart from the certified copy of the register, there were no other available documents in their custody.
58. Even though the 2nd Defendant did not participate in the suit, it is on record that it is expressly admitted that the 2nd Defendant did not have any documents on whose strength the transfer to the 1st Defendant was effected.
59. Given the said admission by the District Land Registrar and coupled with the affidavit sworn by the 1st Defendant Anthony Muthutho Mureithi on 3rd August, 2022 (Exhibit P7), wherein he sates that he has no claim over the suit property, it is my view that the Plaintiff has established on a balance of probabilities that the transfer of the suit property from his name to the 1st Defendant's name was unprocedural.
60. Section 26(1) of the [Land Registration Act](#) provides as follows;
- “The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
61. In *Alice Chemutai Too v Nickson Kipkurui Korir & 2 others* [2015] eKLR, the court while considering the provisions of Section 26(1) of the [Land Registration Act](#) held as follows;
- “ 13. It will be seen from the above that title is protected, but the protection is removed and title can be impeached, if it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, unprocedurally, or through a corrupt scheme...
18. I do not see how a person with a perfectly good title should be deprived of his title by activities of fraudsters. It is in fact time to put down our feet and affirm that no fraudster, nor any beneficiary of fraudulent activities, stands to gain for his fraud, and no title holder will ever be deprived of his good title by the tricks of con artists.”
62. I find that the transfer of the suit property from the Plaintiff to the 1st Defendant was unprocedural and nothing is easier than to make an order for cancellation of the title help by the 1st Defendant.
63. Section 80(1) of the [Land Registration Act](#) provides as follows;
- “ 80.
- (1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or



amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”

B. Who should bear costs of this suit?

64. It is now settled that costs shall follow the event. This is in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the court for good reason, directs otherwise.

Disposition.

65. In the result, the Plaintiff’s suit succeeds and judgment is entered in his favour in the following terms:

- a. A declaration is hereby made that the plaintiff is the registered owner of the parcel of land known as Mau Summit/Molo Block 1/2223(Mutirithia).
- b. The 2nd Defendant is hereby ordered to rectify the register in respect of land parcel Mau Summit/Molo Block 1/2223(Mutirithia) by Cancelling the name of the 1st Defendant (Anthony Muthotho Mureithi) and replacing it with that of the Plaintiff (Joseph Kagera Nduati) within 30 days of the date hereof.
- c. The Plaintiff shall have costs of this suit.

66. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 5th DAY OF FEBRUARY, 2024

L. A. OMOLLO

JUDGE

In the presence of:

Mr. Kamonjo Kiburi for the Plaintiff.

No appearance for the 1st Defendant.

No appearance for the 2nd Defendant.

Court Assistant: Monica Wanjohi.

