



Sigei & another v Chief Land Registrar Nakuru & 2 others (Environment & Land Case E51 of 2022) [2024] KEELC 354 (KLR) (1 February 2024) (Judgment)

Neutral citation: [2024] KEELC 354 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E51 OF 2022
MAO ODENY, J
FEBRUARY 1, 2024**

BETWEEN

DAVID KIPSANG SIGEI 1ST PLAINTIFF

GEOFFREY KIPKIRUI MISOI 2ND PLAINTIFF

AND

CHIEF LAND REGISTRAR NAKURU 1ST DEFENDANT

THE HON ATTORNEY GENERAL 2ND DEFENDANT

AUGUSTINE K. KOROS 3RD DEFENDANT

JUDGMENT

1. By a Plaint dated 19th September, 2022, the Plaintiff herein sued the Defendants seeking the following orders:
 - a. A mandatory order compelling the Land Registrar to lift the Restriction registered against land parcel number Miti Mingi/Mbaruk/Block 3/1736 (Barut) on 19/04/2013 by Augustine Koros.
 - b. A mandatory order compelling the Land Registrar Nakuru to issue Notice to the Government Printers for the loss of the title deed for land parcel number Miti Mingi/Mbaruk/Block 3/1736 (Barut) within 30 days of the Judgment.
 - c. A mandatory order compelling the Land Registrar Nakuru to issue the 1st Plaintiff a title deed for land parcel number Miti Mingi/Mbaruk/Block 3/1736 (BARUT) upon expiry of the gazette Notice.
 - d. An order against the Defendants for Ksh.58,840/= in special damages.



- e. An order against the Defendants for Costs of this suit and interests from the date of filing till payment in full.

Plaintiff's Case

2. PW1 David Kipsang Sigei adopted his statement and list of documents dated 24th November, 2021 and 19th September, 2022 respectively and stated that he is the registered owner of all that parcel of land known as Miti Mingi/Mbaruk/Block 3/1736 (Barut). He produced a Certified copy of Green card certified on 10th November, 2021.
3. It was PW1's case that in 2014, he lost the original Title Deed for the suit parcel of land and commenced the replacement procedure. But when he conducted a search, he realized that on 19th April, 2013, the Nakuru Land Registrar by the name Augustine Koros of Post Office Box number 313, Kabarnet had placed a restriction over his parcel of land.
4. PW1 further stated that he had written severally to the Land Registrar which letters he produced seeking to have the restriction removed and that pursuant to a letter 19th April, 2016, the Land Registrar at the time, CW Sunguti, issued a Notice to the 2nd Defendant to show cause why the restriction should not be lifted but Mr. Koros lodged his Objection on 17th May, 2016.
5. PW1 also testified that the Land Registrar then fixed the matter for hearing but on the set date Augustine Koros failed to appear hence the hearing did not take place and the Registrar concluded that the restriction will be removed. PW1 further stated that on 24th January, 2017, he commenced the process of applying for a replacement of the lost title deed and made a formal application to have the restriction lifted but the lands registry refused to accept the forms for assessment and booking which necessitated the filing of this suit.
6. On cross-examination by Miss Chepkurui, PW1 told the court that according to the copy of green card, the land was government land but he was given by Kalenjini Enterprises who transferred the land to him
7. PW1 also stated that he is the one in occupation since 2011 and only knew about the restriction in 2014 when he wanted to sell the land to a third party.
8. On cross-examination by Mr. Kipkulei, PW1 informed court that he has a title to the suit land and that the search dated 16th September, 2004 in the name of Chesang Silita in respect of parcel No 173 was carried out by the 3rd defendant. He stated that he went to the company and was given a title after signing transfer forms.
9. On re-examination by Miss Sabaya, it was PW1's evidence that the suit plot belongs to him and no one is claiming the land and that his case was for removal of the restriction and that the search that he produced does not have the name of Chesang Silita.
10. PW2 Geoffrey Kipkorir Misoi adopted his statement dated 24th November, 2021 and stated that he stays in Keririgat, works for the Kenya Defence Forces and urged the court to grant the prayers as per the plaint.

Defendant's Case

11. DW1, Augustine K. Koros adopted his statement and list of documents both dated 20th February, 2023 and stated that he is a retired Land Registrar Nakuru who worked from 1999 to 2002. DW1 also produced the list of documents dated 20th February, 2023 as DEX 1 to 3. He stated that he is the original purchaser of the suit land having bought it from Chesang Silita.



12. Upon cross-examination by Miss Sabaya, DW1 stated that he bought the suit land in 2011 from Chesang Silita vide a sale agreement between Chesang and himself which he did not produce. DW1 informed the court that he went to the Land Control Board after 6 months.
13. DW1 informed the court that he paid stamp duty but did not produce the valuation and payment receipt as he left it at the Lands office. He further admitted that he has not produced a copy of the transfer and clarified that the booking form dated 29th August, 1971 was for transfer of land and it did not indicate the purpose.
14. DW1 stated that the booking form dated 18th May, 2016 was for objection to the removal of the restriction and that he did a search but did not bring it to court.
15. DW1 also informed the court that he was charged in court for land fraud in Kabarnet Court and was found culpable and fined one million Kenya shillings but filed an Appeal vide HC CR Appeal No 32 of 2019 of which he did not tell the court the outcome.
16. Upon cross-examination by Mr. Kipkulei, DW1 stated that he has not brought the sale agreement and he tried to trace it in vain. He stated that the criminal case in Kabarnet was in respect of abuse of office and he has not seen the judgment.

Plaintiff's Submissions

17. Counsel submitted that the 3rd Defendant has not produced a sale agreement for the purchase of the suit parcel and relied on Section 3(3) of the Law of Contract Act. Counsel further submitted that if at all the 3rd Defendant had a valid beneficial claim over the suit property, he could have moved the court for orders and probably seek to evict the 1st Plaintiff who is in occupation of the land and also filed a counterclaim which he did not.
18. Ms. Sabaya relied on Section 73 and 76 of the Land Registration No 3 of 2012 and the Environment and Land Court Act No 19 of 2011 has jurisdiction to hear and determine disputes relating to the environment and the use and occupation of and title to land. Counsel submitted that this court has jurisdiction to issue the orders prayed for and relied on the case of Japheth Maranga Mogaka v Mary Jepkemboi Bartilol & 2 others [2019] eKLR.

1st And 2nd Defendant's Submissions

19. Counsel identified the following issues for determination:
 - a. Whether the restriction should be removed.
 - b. Whether the Plaintiff should be issued with a title deed to the suit land
 - c. Costs
20. On the first issue, counsel submitted that the restriction should remain in force until all parties prove ownership to the suit land. It was counsel's submission that the green card indicated that the same was opened on 28th September, 2012 while the title deed indicates 5th August, 1991.
21. Counsel submitted that in the instant case, Section 76 (2) (b) should be applied and the 1st Plaintiff and 3rd Defendants should be compelled to prove ownership of the suit land before the restriction can be removed and relied on the case of Mukuria James Chacha & 2 others v Land Registrar Muranga [2019] eKLR.



3Rd Defendant's Submissions

22. Counsel relied on Section 3 (3) of the Law of Contract Act and submitted that none of the parties passed the test set in the section for failing to produce a sale agreement between the initial owner.
23. Counsel relied on Section 76 (1) of the Land Registration No 3 of 2012 and submitted that the Registrar found it proper to restrict this parcel and had sufficient reasons for not lifting the restriction.

Analysis And Determination

24. The issues for determination are whether the Land Registrar should lift the restriction registered against suit property placed by the 3rd Defendant on 19th April, 2013 and issue the 1st Plaintiff with a title deed for the suit parcel.
25. Section 76(1) of the Land Registration Act provides that:

For the purposes of compulsory acquisition the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such persons as the Registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.
26. Section 78 (1) and (2) of the Land Registration Act provides that:
 1. The Registrar may, at any time and on application by any person interested or at the Registrar's own motion, and after giving the parties affected by the restriction an opportunity of being heard, order the removal or variation of a restriction.
 2. Upon the application of a proprietor affected by a restriction, and upon notice to the Registrar, the court may order a restriction to be removed, varied, or other order as it deems fit, and may make an order as to costs.
27. The plaintiff's claim is for removal of a restriction lodged by the 3rd defendant on 19th April 2013. It is on record that the plaintiff had written several letters to the Land Registrar on the issue of the removal of the restriction and pursuant to a letter dated 19th April 2016 the then Nakuru District Land Registrar, CW Sunguti issued a Notice to the 3rd Defendant to show cause why the restriction should not be lifted but the Defendant did not attend the meeting.
28. It is also no record that the 3rd Defendant lodged his objection to the removal of the restriction on 17th May, 2016 claiming purchaser's interest and that the District Land Registrar issued a Hearing Notice for 8th June, 2016 of which the 3rd Defendant failed to attend consequently the Registrar concluded that the restriction will be removed.
29. The 3rd Defendant admitted that he was a Land Registrar in Nakuru from 1999 to 2002. He admitted that he was charged at Kabarnet Court with a criminal case on fraud in respect of the suit land of which he was found guilty and fined Kshs.1 Million.
30. From the evidence on record the plaintiff established that he is the owner of the suit land even though the issue of ownership is not issue. The 3rd Defendant who claims to have bought the suit land did not produce any evidence to show his interest apart from the claim and the restriction and objection that he filed. The 2nd defendant also did not file a counterclaim for the suit land to be declared as belonging to him. He was shy to tell the court that the criminal case that he was found culpable was in respect of his fraudulent dealings at the Land office in respect of the suit land.



31. The 3rd Defendant did not call any witness especially the Land Registrar who would have been very helpful to explain why he had not removed the restriction after giving a notice and scheduling a hearing of which the 3rd Defendant did not attend.
32. Counsel for the 3rd Defendant filed submissions and alleged fraud but counsel cannot allege fraud from the bar without having pleaded or laid evidence of fraud against the plaintiff or the defendant. Those were unsubstantiated claims of fraud without supporting evidence.
33. Section 107 (1) of the Evidence Act Cap 80 of the Law of Kenya provides:

Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist...”
34. As earlier stated, Section 78(2) of the Land Registration Act, provides that provides that upon the application of a proprietor affected by a restriction, and upon notice to the Registrar, the court may order a restriction to be removed, varied, or other order as it deems fit, and may make an order as to costs.
35. The provision above indicates that the Court has power to remove any restriction on a title to land upon being satisfied that the terms of such provision has been adhered to. The 2nd and 3rd defendants failed to tell the court why the restriction should not be removed. It is also on record that the Plaintiff had written to the Registrar on several occasions and that the 3rd defendant had been given an opportunity to be heard but never appeared.
36. In the case of Joyce Waithira Mwangi v Thika Land Registrar [2018] eKLR the court ordered the removal of a restriction and held that:

“It is evident from the above provisions of law that the Court has power to remove any restriction on a title to land. The Respondent did not appear in Court to explain why the restriction should not be removed even after the person who applied to have it registered has applied for its removal. This Court therefore finds no reason why the said restriction should remain on the said title and consequently, the Court finds that the Applicant’s Notice of Motion dated 26th May 2016 is merited.”
37. On the issue of special damages, the same was not proved and is therefore not granted apart from costs of the suit.
38. The 1st Plaintiff is in occupation and the same is not disputed. The upshot is that the court finds that the plaintiff has proved his case and judgment is entered in the following terms:
 - a. An order is hereby issued compelling the Land Registrar to lift the Restriction registered against land parcel number MITI MINGI/MBARUK/BLOCK 3/1736 (BARUT) on 19/04/2013 by Augustine Koros.
 - b. The Plaintiff to follow up the procedures of loss and issuance of title with the Land Registrar.
 - c. Costs of the suit to be paid by the 3rd Defendant.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 1ST DAY OF FEBRUARY 2024.

M. A. ODENY

JUDGE



NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure.

