



**Ngatia v Wachira & another (Environment & Land Case E357 of 2021)
[2023] KEELC 702 (KLR) (9 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 702 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E357 OF 2021**

**LN MBUGUA, J
FEBRUARY 9, 2023**

BETWEEN

WILLIAM THITAI NGATIA PLAINTIFF

AND

SIMON WACHIRA 1ST DEFENDANT

CHIEF LAND REGISTRAR (NAIROBI LAND REGISTRY) 2ND DEFENDANT

JUDGMENT

1. The subject matter of this suit is plot number A11-2 Umoja Innercore now allocated parcel number LR Nairobi/ Block 83/14/78 (suit plot). By a plaint dated October 22, 2021, the plaintiff contends that he is the rightful owner of the suit parcel, having purchased the same from one Andrew Mwangi Chui (original owner).
2. He further contends that on or around April 26, 2009, he was undertaking developments on the suit land when he was confronted by one Reverend Joshua Katua who stopped the developments claiming to be the rightful owner by virtue of having allegedly purchased the suit plot from the 1st defendant herein who holds a title for the suit land dated June 24, 2006.
3. The said confrontation prompted the plaintiff to file ELC Case no 537 of 2009, against the said Rev Joshua Katua trading as Jesus Victory Explosion Centre and The National land Commission. In the judgement delivered on September 20, 2021, the court found that the said Joshua Katua was unable to prove his claim over the suit property.
4. The plaintiff's case is that the 1st defendant's title to the suit plot was acquired fraudulently without following due process. He prays for orders and judgement against the defendants jointly and severally for;



- a) An injunction to restrain the defendants, their servants or agents from interfering in any way with the plaintiff's quiet and peaceful enjoyment and/or use of the suit premises LR no Nairobi 83/14/78 pending the hearing and determination of this suit.
 - b) An order declaring that the 1st defendant's certificate of lease for the suit property No LR Nairobi/Block 83/14/78 issued on June 24, 2006 is fraudulent null and void.
 - c) An order revoking the certificate of lease issued to the 1st defendant.
 - d) Costs of the suit plus interest at court rates.
5. The 1st defendant failed to file a defence. The 2nd defendant filed a statement of defence dated February 9, 2022 in which it states that it testified in ELC no 537 of 2009 and will rely on that judgement, but it did not tender any evidence in the current matter.
 6. The plaintiff testified as PW1 where he adopted his witness statement dated October 22, 2021 as his evidence in chief. In summary, he stated that he filed ELC Case no 537 of 2009 against Rev Joshua Katua who was claiming that he bought the suit plot from the 1st defendant herein. The case was determined in his (plaintiff's) favour but the 1st defendant's title could not be revoked because he was not enjoined as a party in that suit and neither was he called as a witness.
 7. He further stated that he was issued with a similar parcel number for his plot as that of the 1st defendant, as well as a certificate of lease. It is the duplication of the title parcel numbers at the lands office that has compelled him to file this suit for the court to adjudicate which of the certificates of lease was genuinely acquired. He produced the 44 items in his bundle of documents as P Exhibit 1-44.
 8. The plaintiff filed written submissions dated December 14, 2022 where he avers that on the issue of ownership of the suit plot, he has produced documents (P-Exhibit 1-4) to prove the root of his title and the said documents were not impeached. He further contends that the earlier judgement in ELC no 537 of 2009 which has not been challenged to date and which the 2nd defendant relied on demonstrated that he is the lawful owner of the suit land. He contends that there being no rival evidence to controvert his own evidence, then it is legally impossible for the 2nd defendant to continue to maintain two titles in respect of the suit plot, thus one register has to give way for good order. He relied on the case of *Mbiti Kieba & another v Isaya Theuri M'Lintari & Another* [2014] eKLR.

Determination

9. There are 2 competing titles issued for LR Nairobi/ Block 83/14/78. One to the plaintiff and the other to the 1st defendant herein. The question for determination is which of the 2 titles is valid.
10. There is evidence that the 1st defendant was served with summons to enter appearance but he failed to enter appearance nor file any defence. However, the plaintiff still had the duty to prove his case. In *Hubert L Martin & 2 others v Margaret J Kamar & 5 Others* [2016] eKLR, the court held;

'A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a



right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder.'

11. Courts have held that it is not sufficient to dangle title when it is under challenge. The Court of Appeal in *Munyu Maina v Hiram Gathiba Maina* [2013] eKLR, held as follows:

“We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”

12. The Plaintiff produced P Exhibit 1-44, where he has demonstrated how he purchased the suit plot from one Andrew Mwangi Chui vide the sale agreement dated April 24, 2009. He also led evidence that Andrew Mwangi Chui was assigned the suit land by Jennifer Wanjiru who was the initial allottee of the suit plot from Nairobi City Commission vide an allotment letter dated July 12, 1990. There is a beacon certificate dated October 5, 2009 showing the location of the suit plot. The plaintiff also produced receipts establishing that the previous owners of the suit plot were paying rates to Nairobi City Council. He also had rate demands and receipts issued in his name. The plaintiff was issued with a certificate of lease on October 6, 2010.

13. A copy of the judgement in ELC Case no 537 of 2009 forms part of the plaintiff's documents. The 2nd defendant had also stated that they would rely on the said judgment. At paragraph 45 of the said judgement, the court states;

“It is therefore clear from the evidence before court that the plaintiff has been able to explain the root of the lease interest he claims in the suit property. The plaintiff has developed the suit property and he is in possession. In the circumstances, the court finds that, as between the plaintiff and the 1st defendant, the plaintiff is entitled to possession of the suit property, Title Number Nairobi Block 83/14/78, previously designated as plot no A11-2, Umoja Innercore, Nairobi. The 1st defendant's counter-claim fails wholly.”

14. From the plaintiff's evidence, the root of his title can be traced. The 1st defendant was unable to defend his title. In my view therefore, the plaintiff holds a valid and good title to the suit property. The title held by the 1st defendant could only have been obtained either by fraud, mistake or through misrepresentation and should be revoked pursuant to the provisions of section 80 (1) of the *Land Registration Act*.

15. In the final analysis, I find that plaintiff has proved his case on a balance of probabilities and I proceed to give judgment in his favour in the following terms.

1. An order is hereby issued declaring that the 1st Defendant's certificate of lease for the suit property no LR Nairobi/Block 83/14/78 issued on June 24, 2006 is fraudulent null and void.
2. An order is hereby issued revoking the certificate of lease issued to the 1st Defendant; The 2nd defendant is hereby directed to act accordingly.
3. No orders as to costs.



**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF FEBRUARY, 2023
THROUGH MICROSOFT TEAMS.**

LUCY N MBUGUA

JUDGE

In the presence of:-

Nduati for plaintiff

Court assistant: Eddel

