



**Mukururo v Kinuthia & another (Environment & Land Case  
237 of 2014) [2023] KEELC 15939 (KLR) (3 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 15939 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 237 OF 2014**

**A OMBWAYO, J  
MARCH 3, 2023**

**BETWEEN**

**JOHN MURAYA MUKURURO ..... PLAINTIFF**

**AND**

**ZIPPHORAH KINUTHIA ..... 1<sup>ST</sup> DEFENDANT**

**JASPER MWENDA IKIARA ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. In a plaint amended and filed on October 4, 2019, the plaintiff states, that he was issued with the letter of offer for allotment of plot No 1107 measuring approximately 0.958 Ha. in Oljorai Phrase 1 settlement scheme. The 1<sup>st</sup> defendant who was a worker and volunteer and a relative of the plaintiff took possession of the plaintiff's letter of allotment and fraudulently sold the offer to the 2<sup>nd</sup> defendant. The particulars of fraud are diverting the letter of offer without the knowledge and consent of the plaintiff and Falsely presenting themselves to the District Land Adjudication and Settlement Officers as owners of Plot 1107. Moreover, committing forgery by preparing and executing an agreement for sale of plot 1107 in the plaintiff's name without his knowledge and consent. Furthermore forging the plaintiff's signature in the execution of the Agreement for sale dated 7<sup>th</sup> June 2012 and receiving the sum of Kshs130,000/= under false pretenses.
2. The plaintiff avers that the defendants knowingly and with intent to defraud presented themselves to the Naivasha District Settlement as the rightful owner of the suit property and misled him to recommend that the 2<sup>nd</sup> defendant be registered as the proprietor of the suit property and it is the plaintiff's case that the title deed held by the 2<sup>nd</sup> defendants is tinged with fraud and therefore is null and void and should be cancelled.
3. The plaintiff further avers that both defendants knew that the 1<sup>st</sup> defendant could not sell the suit property to the 2<sup>nd</sup> defendant as she had no letter of offer in her name.



4. The plaintiff avers that by reason of the matters aforesaid, he has been deprived of his right to take possession and occupation of the suit property thus exposing him to hardship, loss and damages.
5. The plaintiff further states that the defendants are reluctant to address the plaintiff's grievances when approached to do so and it is on this ground that he seeks a declaration that the transaction effected between the 2 defendants on June 7, 2012 was fraudulent and that therefor null and void and that the subsequent registration of title into the 2<sup>nd</sup> defendant's name was unlawful and the said title deed should be cancelled and the Land Registrar ordered to register the property into the plaintiff's name.
6. The plaintiff prays for a declaration that the agreement for sale between the defendants executed on June 7, 2012 was fraudulent and therefore and therefore null and void and therefore the title deed subsequently registered in favour of the 2<sup>nd</sup> defendant should be cancelled and an order that plot No.1107 in Oljorai Settlement Scheme Phase 1 rightfully belongs to the plaintiff in whose favour a title deed should be used. Lastly, an order for eviction of the 2<sup>n</sup> defendant and for compensation in damages equivalent to the current market value of plot No.1107 to be paid by the defendants plus costs and interest.
7. The defendants filed a joint statement of defence on October 3, 2015 denying the plaintiff's allegation.
8. When the matter came up for hearing the plaintiff gave evidence from the United Kingdom virtually that he works in the United Kingdom as an electrician. He was allocated a plot with the Ministry of Land and settlement. The plot was number 1107. The 1<sup>st</sup> defendant collected the letter on his behalf and gave him a photocopy. Zippora sold his land to someone else, the second defendant. The sale agreement is not signed by himself because he was in the United Kingdom when the sale agreement was drafted. Zipporah Wangare was a volunteer worker at the Land Office representing the squatters. The plaintiff did not authorize the sale but he was a squatter before he went to the United Kingdom. He was to pay for the title deeds after showing the letter of offer
9. The defendant and their counsel did not attend court despite being served.
10. This court finds that the 1<sup>st</sup> defendant was given the plaintiff's letter of offer to convey the same to the plaintiff but fraudulently sold it to the 2<sup>nd</sup> defendant. There is no explanation as to how the plaintiff's letter of offer ended up with the 2<sup>nd</sup> plaintiff. Moreover, the plaintiff's signature was forged because he was not in Kenya. In *Vijay Morjaria v Nansingh Madhusingh Darbar & another* [2000] eKLR, Tunoi JA (as he then was) stated as follows:
 

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.” Emphasis ours.
11. Given the seriousness of the allegations, the onus was on the plaintiff to provide evidence to the Court of the alleged fraud which evidence must meet the standard of proof as was underscored by this court in *Central Bank of Kenya Limited v Trust Bank Limited & 4 others* [1996] eKLR as being beyond that



of a balance of probabilities but not beyond reasonable doubt. In that case, the court rendered itself as follows:

“The appellant has made vague and very general allegations of fraud against the respondent. Fraud and conspiracy to defraud are very serious allegations. The onus of prima facie proof was much heavier on the appellant in this case than in an ordinary civil case.”

12. I do find that the plaintiff has proved his case on beyond a balance of probabilities that he was allocated the land which was fraudulently taken from him and I do grant judgment in favor of the plaintiff in terms of a declaration that the agreement for sale between the defendants executed on June 7, 2012 was fraudulent and therefore null and void and therefore the title deed subsequently registered in favour of the 2<sup>nd</sup> defendant should be and is hereby cancelled.
13. I do grant an order that plot No.1107 in Oljorai Settlement Scheme Phase 1 rightfully belongs to the plaintiff in whose favour a title deed should be used forthwith. The defendants to vacate the suit land within 90 days failure of which an order for eviction is hereby issued. The defendants to pay the plaintiff general damages of ksh 100,000 for trespass. Costs and interest to the plaintiff.

**JUDGMENT DATED SIGNED AND DELIVERED VIA EMAIL AT NAKURU THIS 3<sup>RD</sup> DAY OF MARCH 2023.**

**A O OMBWAYO**

**JUDGE**

