



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KERUGOYA

ELC CASE NO. 181 OF 2016

ERNEST KINYUA NJUA.....PLAINTIFF

VERSUS

JOSEPH MURIITHI STANLEY.....DEFENDANT

JUDGMENT

Introduction

The Plaintiff filed this suit vide a plaint dated 8th November 2016 seeking the following orders:-

- a. A declaration that the Defendant accept the Plaintiff's repayment of the loan of Ksh. 500,000/= plus Ksh. 500,000/= interest.**
- b. Punitive damages.**
- c. Costs of the suit.**
- d. Interest on punitive damages at Court's rates from date of judgment till payment.**
- e. Any other order as the Court may deem just and expedient to grant.**

This suit was filed simultaneously with a Notice of Motion under certificate of urgency in which he was seeking equitable relief of injunction restraining the Defendant by himself, his servants, agents from inter alia entering upon or carrying out any works or erecting any structures or buildings upon that parcel of land known as L.R. INOI/KAMONDO/3387 pending hearing and determination of the said application and/or the main suit.

Upon placing the application before the duty Judge on 1st December 2016, the Court granted the injunction orders restraining the defendant by himself or his servants and/or agents from transferring that parcel of land known as L.R. INOI/KAMONDO/3387 pending the hearing and determination of this suit.

In his defence dated 20th April 2017, the defendant sought to have the suit dismissed.

PLAINTIFF'S CASE

The Plaintiff testified as PW1 and referred to his witness statement dated 8th November 2016 which he adopted in his testimony. According to the plaintiff, he was the registered proprietor of all that parcel of land known as L.R. No. INOI/KAMONDO/3387 where he was issued with a title on 14/05/2009. In May 2015, he was in desperate need of money in the sum of Ksh. 500,000/= to sort out a personal financial issue. He approached one Lucy Njoki Mwangi who was known to him. The said Lucy Njoki Mwangi told him that she knew someone by the name Joseph Muriithi Stanley (defendant) who could advance him the quick loan he needed. Lucy Njoki Mwangi took him to the said Joseph Muriithi Stanley who agreed to advance him the Ksh. 500,000/= on conditions that he repays within thirty (30) days. It was also a condition that the said loan advance would attract an interest at 100%. The plaintiff was also to give a security for the loan and in default of paying the loan together with interest, he would have to transfer the security to the defendant.

The plaintiff further stated that the defendant through vicious and coercive actions had the agreement prepared as an "Agreement for sale" of his land parcel No. INOI/KAMONDO/3387. Due to desperation for the cash, he had no option but to sign the "Agreement for sale" as he

was in dire need of the money. The defendant assured him that the loan agreement which was designed as an "Agreement for sale" was just meant to cushion him against any losses in case he defaulted in repaying the loan. They therefore signed the agreement on the 5th May 2015 and he was to repay back the money within thirty (30) days after the signing.

The plaintiff further stated that before the expiry of the thirty days, his wife informed him that she heard from reliable sources that the defendant was in the process of transferring his land to himself. He went to the Lands Registry Kerugoya on 27th May 2015 and carried out an official search. To his surprise, he discovered that the defendant had caused his land L.R. No. INOI/KAMONDO/3387 to be registered in his name. He also obtained a green card showing that the said parcel of land had been transferred to the defendant on 7th May 2015. This came as a shock to him as he had not provided his consent and neither had his wife consented for the land to be transferred. They had not also appeared before the Land Control Board to give their consent. He expressed shock how the defendant could have transferred his land within two (2) days.

He stated that it was not his intention to sell the suit land No. INOI/KAMONDO/3387 to the defendant but he was coerced to sign the "Agreement for sale" in place of a Loan Agreement after he was told that would make the security he offered him in form of land parcel more "viable". He reiterated that the loan he got from the defendant was Ksh. 500,000/= at an interest of 100%. He later heard that the defendant wanted to sell the land and he placed a caution. The defendant later asked him to remove the caution but he refused. The defendant told him whether he removes or not, he was going to have it removed. He reported the matter to the D.C.I Kerugoya where the defendant was summoned for questioning. The plaintiff referred to a list of Documents containing six (6) items which he produced as Plaintiff's Exhibits 1, 2, 3, 4, 5 and 6 respectively.

PW2 was Margaret Annita Omullo. She is the County Land Registrar Kirinyaga County. She was sworn and stated that she attended Court pursuant to Court summons and identified a copy of green card and transfer documents from Ernest Kinyua Muriithi to Joseph Muriithi Stanley. She also identified a letter of consent to transfer dated 20/4/2015 and an application for consent as well as copies of I/D Cards for both parties and a copy of the old title deed for Ernest Kinyua Njua, the stamp duty slip for the transfer. She produced the documents in evidence as Plaintiff's Exhibits 4, 7, 8, 9, 10 (a) & (b) 11 and 12 respectively.

On cross-examination, the witness stated that the transfer documents were executed by all the parties in accordance with the law. She admitted that spousal consent was necessary at the time of the transfer but the same was not availed. She stated that it must have been an omission by the Registrar. All the transfer documents were handed over to the Land Registrar except the spousal consent.

DEFENCE CASE

The defendant alone testified on oath and stated that the plaintiff approached and informed him that he wanted to sell his land parcel No. INOI/KAMONDO/3387 for a consideration of Ksh. 1,000,000/= to off-set debts which were weighting him down. He stated that they entered into the sale agreement as willing seller and willing buyer and that all the legal procedures were followed. He stated that the plaintiff executed all the legal documents. He said that the completion date was 30 days but he opted to transfer earlier and that there was nothing illegal about it.

LEGAL ANALYSIS AND DECISION

I have considered the pleadings, the exhibits produced and the submissions by the parties. The plaintiff's claim is hinged on fraud, misrepresentation, deceit and illegality. The particulars of fraud and illegality are stated at paragraph 14 of the plaint. Fraud is a serious allegation carrying a criminal element. The standard of prove in allegations of fraud is higher than the proof on a balance of probabilities required in civil cases but slightly below that of beyond reasonable doubt.

The sale agreement dated 5/5/2015 also produced as Plaintiff Exhibit No. 2 indicates that the plaintiff was selling the suit land parcels No. INOI/KAMONDO/3387 which is the subject of this dispute at a consideration of Kenya Shillings one million (Ksh. 1,000,000/=). The terms and conditions of the said sale agreement are so clear that it leaves no doubt in the mind of any reasonable man that the Vendor was indeed disposing the same and not giving it as a security for loan. The agreement was witnessed by one Lucy Njoki Mwangi and attested by Mwangi Kinyua Advocate. The plaintiff did not call the said Njoki Mwangi or Mwangi Kinyua as witnesses to deny that what the plaintiff and the defendant had entered into was not a sale of Land Agreement. The County Land Registrar Kirinyaga Margaret Annita Omullo confirmed that the suit property was transferred from the plaintiff to the defendant procedurally and lawfully.

She produced a copy of the green card, transfer documents including a letter of consent to transfer dated 20/4/2015, an application for consent, copies of I/D Cards for both parties, and a copy of the old title deed for the plaintiff and the stamp duty payment slip for the transfer. All these documents were not challenged by the plaintiff. I find that the plaintiff did not prove the commission of any fraud in the process of acquiring and/or transferring of the suit property from the plaintiff to the defendant. The agreement was based on willing buyer willing seller. The only irregularity in the sale transaction was failure by the defendant to obtain a spousal consent to complete the transfer process. It was a legal requirement at the time for spousal consent before transfer of land was effected. In the absence of a spousal consent, I find that the sale of the suit property from the plaintiff to the defendant was tainted with procedural irregularity. I therefore find the agreement for sale of the suit land parcel No. INOI/KAMONDO/3387 irregular and un-procedural.

CONCLUSION

In view of the matters aforesaid, I find the plaintiff has proved his claim, not on grounds of fraud but procedural irregularity. Consequently, judgment is hereby entered in the following terms:-

- 1. A declaration that the transfer of land parcel No. INOI/KAMONDO/3387 from the Plaintiff to the Defendant is irregular and un-procedural for want of spousal consent.**

2. An order is hereby issued cancelling the title deed to L.R. No. INOI/KAMONDO/3387 in the name of the Defendant, JOSEPH MURIITHI STANLEY.

3. The County Land Registrar, Kirinyaga County do rectify the register at the Lands registry to reflect land parcel No. INOI/KAMONDO/3387 belongs to the Plaintiff, ERNEST KINYUA NJUA.

4. The Plaintiff, ERNEST KINYUA NJUA to pay the Defendant JOSEPH MURIITHI STANLEY a refund of the purchase price in the sum of Kenya Shillings one million (Ksh. 1,000,000/=).

5. Since the Plaintiff partially succeeded, I order each party to bear his own costs of this suit.

JUDGMENT READ, DELIVERED PHYSICALLY AND SIGNED IN OPEN COURT AT KERUGOYA THIS 5TH DAY OF NOVEMBER, 2021

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E.C. CHERONO

ELC JUDGE

In the presence of:-

1. Ms Ndungu holding brief for Mrs Makworo

2. Mr. Mugo holding brief for Maina Kagio

3. Kabuta, Court clerk.