



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 248 OF 2013

(FORMERLY CIVIL CASE NO. 57 OF 2012 EMBU)

AGNES WANJIRU NJOGU (Suing in her capacity

as the Legal representative to the Estate of

JOSEPH NJOGU GITHAIGA).....PLAINTIFF

VERSUS

NICHOLAS KIRAGU NGACHA.....DEFENDANT

JUDGMENT

BACKGROUND

The plaintiff filed this suit vide a plaint dated 10th April 2013 seeking the following orders:

- (1) The defendant registration of land parcel Number MWERUA/MUKURE/1752 was obtained fraudulently, illegally, un-procedurally and irregularly.***
- (2) That the District Land Registrar, Kirinyaga be ordered to remove the name of the defendant, Nicholas Kiragu Ngacha from the Register of land parcel No. MWERUA/MUKURE/1752 and the title deed issued be cancelled.***
- (3) The costs of this suit.***
- (4) Any other relief that this Honourable Court may deem fit to grant.***

On 23rd May 2012, the defendant filed defence denying the plaintiff's claim and put him to strict proof thereof.

PLAINTIFF'S CASE

The plaintiff who is the wife of Joseph Njogu Githaiga (deceased) stated that at the time of his death, her husband Joseph Njogu Githaiga was the registered proprietor of land parcel No. MWERUA/MUKURE/1752. The title to the suit property had been charged to the Agriculture Finance Corporation. On 28th June 2010, she was issued with a limited grant. Sometime in November 2009, she was served with a citation by the defendant who was seeking letters of administration to her late husband. The Succession Cause was No. 111/2009. She objected to the grant being issued to him. However, she was not informed when the matter was coming up for hearing until she learned that he had been issued with a grant. Upon investigation, she found that the defendant had obtained registration on land parcel No. MWERUA/MUKURE/1752 with her husband. She sought to know the particulars and the process and wrote a letter dated 18th November 2011 to the District Registrar seeking to know how the registration was effected but no registration documents could be traced in the Lands office. However, the copy of register shows that the defendant's name was entered as a joint proprietor together with her husband on 10th September 2007. She stated that the Lands office could not explain how registration was effected over one month after the death of her husband. The plaintiff also stated that her late husband had charged the suit property to secure a loan with A.F.C. The register shows that a discharge was registered on 13th August 2007 one week after her husband passed away. There were no consent or transfer forms executed by her late husband. The plaintiff further stated that while all those were happening, the defendant applied for confirmation of grant in Succession No. 111/2009.

DEFENDANT'S CASE

The defendant also testified on oath and stated that sometime in 2006, the late Joseph Njogu Githaiga approached him for financial assistance. The defendant stated that the late Joseph Njogu Githaiga told him that he had secured a loan with the A.F.C using the title to the suit property as collateral. The said Joseph Njogu Githaiga (deceased) also told him that he was unable to pay the loan and that A.F.C was about to exercise their statutory power of sale. They agreed that he was to buy a portion of ½ acre to enable him pay the loan. Him together with the late Joseph Njogu Githaiga proceeded to A.F.C whereby the late Joseph Njogu Githaiga pleaded with them not to sell the land. The late Joseph Njogu Githaiga entered into some arrangements whereby he was to pay the loan. Upon completion of the repayment of the loan, the discharge of charge was given to him. They then entered into a sale agreement dated 2nd January 2007. On 28th March 2007, they did the final agreement with the late Joseph Njogu confirming that the deceased had no further claim against him. Subsequently, they applied for consent of the Land Control Board. They signed the application for consent and agreed to be owners in common having equal shares. The deceased gave him his P.I.N and copy of National Identity Card. They also took a joint passport size photograph to enable the booking of the Land Board. The deceased also gave him a signed transfer form and after obtaining the consent from the Land Control Board, and when the said Joseph Njogu Githaiga passed on, there was no further obligation required of him to perform. He stated that they used to update the plaintiff of every step they were taking. He is now shocked that the plaintiff has sued him after he spent his money to prevent their land from being sold by A.F.C.

He stated that obtaining registration after the owner died is proper as his death had no effect on the process of registration. The defendant further stated that the moment the deceased signed the application forms for consent of the Land Control Board, the consent of the Land Board issued, signing the transfer documents, given his P.I.N certificate, copy of I/D Card, passport size photograph and the discharge of charge, the deceased had done all that was required of him.

SUBMISSIONS BY THE PLAINTIFF

The plaintiff failed to file submissions within the timelines given by the Court.

DEFENDANT'S SUBMISSIONS

The defendant also failed to file submissions as agreed.

ISSUES FOR DETERMINATION

The issues for determination are as follows:

(1) Whether the registration of the defendant as proprietor of land parcel No. MWERUA/MUKURE/1752 was obtained fraudulently, illegally, un-procedurally and irregularly.

(2) Whether the title to the said land parcel No. MWERUA/MUKURE/1752 is liable to be cancelled and registered in the name of the plaintiff.

(3) Who shall bear the costs of this suit?

ANALYSIS AND DECISION

I have considered the evidence adduced by the plaintiff and the defendant. I have also looked at the documents produced by both the plaintiff and the defendant in support and in defence of this case. This case has a bearing to a succession cause filed by the defendant in Meru High Court being Succession Cause No. 111 of 2009. In order to put into perspective the issues in this case, it is imperative to start by saying that the subject of this suit being land parcel No. MWERUA/MUKURE/1752 was registered in the name of Joseph Njogu Githaiga on 11th June 2003. From a copy of death certificate No. 142076 produced by the plaintiff as Exhibit No. 2, the said Joseph Njogu Githaiga passed away on 6th August 2007.

Proceeding from the High Court in Meru Succession Cause No. 111 of 2009 indicates that the defendant, Nicholas Kiragu Ngacha moved the Court citing the plaintiff Agnes Wanjiru Njogu for purposes of filing succession in respect of the Estate of her late husband Joseph Njogu Githaiga (deceased). It transpired from those proceedings that the plaintiff only filed and obtained limited grant of letters of administration but not succession proceedings. The defendant appears to have been ruffled by the actions of the plaintiff and he took it upon himself and proceeded with the succession cause in the same case which was subsequently confirmed with him being confirmed as one of the dependants of the Estate of the said Joseph Njogu Githaiga as a purchaser. That happened despite the fact that the plaintiff entered a protest to the confirmation. As if that is not enough, the defendant went ahead and caused the suit property No. MWERUA/MUKURE/1752 to be registered in their joint names on 10th September 2007. On 13th September 2007, a title in their joint names was issued. In a letter dated 24th September 2007, the defendant wrote to the Branch Manager, Agricultural Finance Corporation Reference No. AFC/KYA/215/224 requesting for restructuring of a loan of Ksh. 200,000/= taken on 1st April 2004 and on 13th August 2007, a discharge of charge was entered. These in my view demonstrates clear acts of fraud, illegality and irregularity which this Court cannot accept. I am satisfied that the defendant has committed acts of fraud and intermeddled with the Estate of the deceased Joseph Njogu Githaiga.

In the final analysis, I find and hold that the plaintiff has proved her case to the required standard. Consequently, I enter judgment for the plaintiff against the defendant in the following terms:

(1) The defendant registration of land parcel No. MWERUA/MUKURE/1752 was obtained fraudulently, illegally, un-

procedurally and irregularly.

(2) The District Land Registrar Kirinyaga be and is hereby directed to rectify the register by removing the name of the defendant, Nicholas Kiragu Ngacha from the register of land parcel No. MWERUA/MUKURE/1752 and the title deed issued be cancelled.

(3) The costs of this suit be borne by the defendant.

(4) A copy of this judgment be forwarded to the Directorate of Criminal Investigation, Kirinyaga County for investigations and prosecution of any parties who may be found to have committed any criminal offence.

READ and SIGNED in open Court at Kerugoya this 5th July, 2019.

E.C. CHERONO

ELC JUDGE

5TH JULY, 2019

In the presence of:

- 1. M/S Mohindi holding brief for Maina Kagio for Defendant*
- 2. Plaintiff in person – present*
- 3. Defendant in person – present*
- 4. Mbogo Court clerk – present*