



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC SUIT NO.706 OF 2017

ABDILLAHI KARIUKI ADAM.....PLAINTIFF

VERSUS

SAMUEL NDUNGU NGAMAU.....1ST DEFENDANT

THE LAND REGISTRAR THIKA.....2ND DEFENDANT

LUCY WAMBUI GITHINJI.....3RD DEFENDANT

HON.ATTORNEY GENERAL.....4TH DEFENDANT

JUDGEMENT

By a **Plaint** dated 16th August 2017, and filed on 17th August 2017, the Plaintiff herein sought for Judgement against the Defendants jointly and severally for; -

- a) A declaration that **Plot No. Ruiru West Block 1/1267** belongs to the estate of **Adam Kimani Mumin** Alias **Adam Mumin**, the Plaintiff's father.
- b) An order cancelling and/or revoking title deed for **Plot No.Ruiru West Block 1/1267**, illegally registered in the names of **Lucy Wambui Githinji**, the 3rd Defendant.
- c) Defendants to pay Costs plus interests.
- d) Any other relief that the Court deems fit to grant.

In his statement of claim, the Plaintiff stated that he brought this suit on behalf of the Estate of **Adam Mumin** (deceased) by virtue of a Limited Grant of Letters of Administration Ad litem. He averred that in 1973, his late father

Adam Kimani Mumin, Alias **Adam Mumin** (deceased) became a shareholder of **Githunguri Ranching Co. Limited**, vide share certificate No.2697 and was issued with a clearance certificate and on 22nd September 1992, he was issued with an allotment letter number 7098/VII/235.

He further averred that sometimes in 2003, the 1st Defendant in collusion with the 2nd Defendant fraudulently caused the land to be transferred to the 1st Defendant. He particularized fraud thus;

- 1) Forging share certificate dated 19th October 1973, in the names of **Chege Waweru**.
- 2) Forging a survey fees receipt dated 4th July 1973 for survey fees in the names of **Chege Waweru**.
- 3) Forging a ballot card number 1267.
- 4) Causing the subject plot of land to be illegally transferred and registered in the name of the 1st Defendant without requisite transfer documents from **Githunguri Ranching Co. Limited**.
- 5) Colluding with the Land Registrar to be issued with title deed without proper legal documents for such a transaction.

It was his contention that after lodging a claim with **Githunguri Ranching Co. Limited**, it was resolved vide a verdict by **Directors of the Company on 7th July 2017**, that the **1st Defendant** could not explain how he purchased the suit property from **Chege Waweru**, a copy of share certificate produced by the **1st Defendant**, had no share certificate number and **Plot No. Ruiru West Block 1** is a leasehold area not a **Freehold**, and the **Freehold** title issued to **Samuel Ndungu Ngamau** was fake.

It was his further contention that the registration of the **3rd Defendant** as the owner thereof should be cancelled.

The suit is contested and the **1st Defendant** filed a **Defence on 18th September 2017**, and averred that he purchased **Plot No. Ruiru West Block 1/1267**, in 2001 from one **Chege Waweru**, after conducting due diligence at **Githunguri Ranching Co. Limited** offices upon production of **Survey Fees receipt dated 14th July 1973**, ballot card number **1267**, and original share certificate of **Chege Waweru**. Further that in 2002 he obtained a clearance certificate for **Plot No. Ruiru West Block 1/1267** to enable him process a title deed and in 2005, he sold the said property to one **Lucy Wambui Githinji**, the **2nd Defendant**.

It was his contention that the suit property was approved as a freehold interest, instead of leasehold inside the history of land and settlement letter dated **29th September 1998**. He further contends that there is no **Privity of Contract** between himself and the **Plaintiff's father**, as he is an innocent purchaser for value, having purchased the said plot from **Chege Waweru**.

3rd Defendant also filed her statement of Defence on **19th September 2017**, and averred that she purchased the suit property from the **1st Defendant** vide a sale agreement dated **19th August 2004**, and prior to entering into an agreement for sale, he obtained a copy of the title deed and conducted an official search at the **Thika Land's Office**. She further averred that prior to the said transaction, the **1st Defendant** supplied her with copies of clearance certificate issued to him by **Githunguri Ranching Co. Limited** and a letter from the **Ministry of Lands** dated **29th September 1998**. On or about the **2nd June 2017**, she was summoned to the **OCS Ruiru Police Station** and accused of having falsely obtained land registration. It was her contention that the **OCS** dismissed them without making entries in the **OB**, and the same ought to be decided or followed up by **Githunguri Ranching Co. Limited**.

The **2nd** and **4th** Defendants filed a statement of Defence on **15th May 2019** and vehemently denied allegations raised in the **Plaint** and the **Plaintiff** ought to be put to strict proof on fraud related issues as raised in his claim.

The matter proceeded by way of *viva voce* evidence on **8th July 2020**.

Plaintiff's Case

Pw 1- Abdillahi Kariuki Adam adopted his witness statement as part of his evidence. He further testified that his father **Adam Mumin** alias **Adam Macharia** got the share certificate in 1973, the clearance certificate on **15th September 1993**, and an allotment letter in 1992. He further testified that upon finding out that the land was grabbed, he raised a complaint at **Githunguri Ranching Co. Limited** and the Defendants were summoned.

It was his further contention that there was a verdict by **Githunguri Ranching Co. Limited** signed by all the **Directors of the Company**. Further, one **Samuel Ndungu Ngamau** was arrested and charged with different counts, but the matter is still pending in Court. He adopted his list of documents as **Exhibit 1** and further list of documents as **Exhibit 2**.

On Cross-examination, he testified that his father had lived on the suit land since 1973, and died in 2003, but got to know about the encroachment in the year 2010, and filed this case in 2007. It was his testimony that he had a share certificate, a letter of allotment dated **22nd September 1992**, receipt dated **24th September 1992**. He also contended that the land is a leasehold and the **1st Defendant** forged the documents.

On re examination, he testified that the **Land Registrar** colluded with the **1st Defendant**. He further testified that the land was initially for **Githunguri Ranching Co. Limited** and it later came to his father's name.

On cross examination by the **3rd Defendant Counsel**, he testified that the **1st Defendant** colluded with the **1st Defendant** to grab his land. He further testified that there is a criminal case against the **1st Defendant** being **CR CASE No.121 of 2017**, filed at **Thika Chief Magistrate's Court**. That the land belonged to his father and he used to pay land rent and rates and the receipts are in Court. Further, that his father died in 2003, and he discovered the encroachment in 2010, while the case was filed in 2017.

PW 2- John Maina Mburu, testified that he is the **Chairman of Githunguri Ranching Co. Limited** and the dispute involving **Plot No. Ruiru West Block 1/1267**, was between the **Plaintiff**, **1st** and **3rd Defendant** which started in 2016. He further testified that they made a verdict stating that the **Plaintiff** was the rightful owner of the suit property having acquired it from his father **Adam Macharia**, who was a shareholder of **Githunguri Ranching Co. Limited**. He contended that during the hearing of the case at **Githunguri Ranching Co. Limited**, the **Plaintiff** brought the following;- share certificate in the name of **Adam Macharia**. Affidavit for correctness of names, receipt dated **4/7/1977**, receipt dated **7/3/1983**, receipt dated **16/12/1988**, receipt dated **4/8/1983**, receipt dated **4/8/1983**, for payment of shares, clearance of shares, letter of allotment dated **27/09/1992**, letter dated **27/09/1992** from lands office, ballot card number **1267**.

While **Ngamau** had share certificate dated **19/10/1973**, in the name of **Chege Waweru**, copy of survey fees receipt dated **4/7/1973**, certificate of shares no.9057 dated **6/12/2001**, receipt dated **30/11/2001**, copy of defaced ballot and freehold title deed issued on **14/07/2005**.

That both parties came for the hearing of their case and the Board was satisfied that the Plaintiff's documents were consistent and the ones by 1st Defendant had many anomalies such as there was no share certificate number and the receipt of 4/7/1973, had no receipt number and that the title deed for Ngamau was Freehold title, while the suit land is a leasehold area.

On cross examination, he testified that the dispute was referred to the Company in 2016. That they did not know that the area had a title deed and had no documents to prove that the area was a leasehold. That the Company wanted to do a change of user, but discovered that the area had a change of user. He further testified that the documents held by Ngamau were not genuine.

Defence Case

Dw 1- Samuel Ndungu Ngamau adopted his witness statement as part of his evidence and his list of documents as exhibit 1-6.

On cross examination, he testified that he has no sale agreement and cannot trace it and that he has a criminal case, but not yet convicted. He further testified that the land is freehold, but the former chairman said that it was leasehold.

Upon cross examination by the Counsel for the 3rd Defendant, he stated that he knew about the dispute in 2017, upon being called by the OCS Ruiru. He further stated that the land is Freehold and not Leasehold, and referred to the letter of 1998, from the Ministry of Lands.

Upon cross examination by the Counsel for the 4th Defendant, he stated that he processed the title for himself and used the letter that he got from Githunguri Ranching Co. Limited.

On re-examination, he testified that he used the clearance from Githunguri Ranching Co. Limited, to process title. He further testified that the land is registered in the name of Lucy Wambui.

Dw 2-Lucy Wambui Githinji adopted her witness statement filed on 19th /9/2017, and her list of documents as Exhibits 1-7.

On cross examination, she testified that she did a search and noted that the land was for Samuel and she has the title deed in the name of the 1st Defendant.

On re-examination, she stated that she did due diligence and also did a search and the land was in the name of Samuel Ndungu Ngamau.

Dw 3- Robert Mugendi Mbugua, testified that he is a Land Registrar stationed in Ruiru. He prepared a list of documents and witness statement dated 14th/12/2010, and adopted the same as his evidence.

On cross examination by the Plaintiff Counsel, he stated that the block of land is owned by Githunguri Ranching Co.Limited, and that the land is freehold. He further testified that with regard to the tenure of the land, Ruiru West Block 1, was initially issued with leases in the year 2002, but in 2018, the Director of Land Administration communicated to District Land Administration Officer, advising that the land be converted to Leasehold from Freehold. That there are owners of land who have both leases and freehold titles and that the land was allegedly transferred to Samuel, the same date it was transferred to Lucy.

On cross examination, by the 1st Defendant Counsel, he testified that the land is now Freehold since 2003, and registration as freehold that time was valid. That Lucy is the registered owner.

On cross examination by the 3rd Defendant Counsel, he stated that he did not have the documents before a caution was filed, and the Plaintiff applied for the caution as the owner.

After the *viva voce* evidence, parties were directed to file written submissions. The Plaintiff filed his submissions dated 10th January 2021, through the Law Firm of B N Kilonzo &Co. Advocates. The 1st Defendant filed his submissions dated 29th March 2021, through the Law Firm of Millimo Muthomi &Co. Advocates. The 3rd Defendant filed her submissions dated 8th March 2021, through the Law Firm of Agnes W.Njoroge &Co. Advocates and the 2nd and 4th Defendants filed their submissions dated 12th June 2021 through Mwihaki Ndundu for the Attorney General.

Having now carefully read and considered the pleadings, written submissions by the parties, cited authorities and relevant provisions of law, the Court finds the issue for determination as follows;

1. *Who is the bonafide owner of Plot No.Ruiru West Block 1/1267.*
2. *Whether the Plaintiff is entitled to the orders sought*

Who is the bonafide owner of Plot No.Ruiru West Block 1/1267.

It is the Plaintiff's case that the late Adam Kimani Mumin Alias Adam Mumin(deceased) was the registered owner of the suit property, having been allotted the same by the Githunguri Ranching Company Limited. Further, the Plaintiff testified that the late Adam Kimani Mumin Alias Adam Mumin was issued with a share certificate and a Clearance Certificate upon which he sought to be registered as the

proprietor of the suit property.

On the other hand, the 1st Defendant has alleged that he purchased **Plot No. Ruiru West Block 1/1267, in 2001 from one Chege Waweru after conducting due diligence at Githunguri Ranching Co.Limited, offices upon production of Survey fees receipt dated 14th July 1973, ballot card number 1267, and original share certificate of Chege Waweru.**

The 3rd Defendant contends that she purchased the suit property from the 1st Defendant vide a sale agreement dated 19th August 2004. This Court has seen share certificate in the name of Adam Macharia, affidavit for correctness of names, receipt dated 4/7/1977, receipt dated 7/3/1983, receipt dated 16/12/1988, receipt dated 4/8/1983, receipt dated 4/8/1983 for payment of shares and letter of allotment dated 27/09/1992

However, the Plaintiff still has an obligation to give evidence on the procedure that was used to acquire the title to land. See the case of **Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others[2016] eKLR**, where the Court held that;

‘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.’

On the other hand, the 1st Defendant contends that he purchased **Plot No. Ruiru West Block 1/1267, in 2001 from one Chege Waweru, after conducting due diligence at Githunguri Ranching Co.Limited** However, the Plaintiff has pleaded that all these documents are a forgery.

*Having alleged that the 1st and 3rd Defendants procured the title through falsified documents, it then became incumbent upon the Plaintiff to prove the same. The Plaintiff has relied on a verdict from the **Githunguri Constituency Ranching Company Limited** that stated that the Board was satisfied that the Plaintiff’s documents were consistent and the ones by 1st Defendant had many anomalies e.g. there was no share certificate number and the receipt of 4/7/1973, had no receipt number and that the title deed for Ngamau was Freehold title while the suit land is a leasehold area.*

As already stated, there was a process through which a shareholder of the Company could acquire title. The 1st Defendant claim that he has share certificate dated 19/10/1973, in the name of Chege Waweru, copy of survey fees receipt dated 4/7/1973, Certificate of shares No.9057, dated 6/12/2001, receipt dated 30/11/2001, copy of defaced ballot and freehold title deed issued on 14/07/2005.

*Though, the 1st and 3rd Defendants have produced documentation, including a share certificate and a clearance certificate from **Githunguri Constituency Ranching Company**, dated 22/11/2002, a title deed in the name of the 3rd Defendant, they have failed to give evidence of the process through which **Chege Waweru** transferred the suit land to 1st Defendant. There is nothing on record to show the process of transfer in terms of sale agreement, transfer or purchase of shares by one **Chege Waweru** in favor of the 1st Defendant.*

*The Court has seen the verdict by **Githunguri Constituency Ranching Company** dated 7th July 2017, which stated that the Board was satisfied that the Plaintiff’s documents were consistent and the ones by 1st Defendant had many anomalies e.g. there was no share certificate number and the receipt of 4/7/1973, had no receipt number and that the title deed for Ngamau was Freehold title while the suit land is a leasehold area. The same sentiments were confirmed by Pw 2 and was not challenged.*

The above verdict was never challenged by the 1st and 3rd Defendants who had an obligation to even appeal the said decision through the Githunguri Constituency Ranching Company administrative organs or the Court but they failed to do so.

Section 26 (1) of the Land Registration Act, gives a registered owner of property absolute and indefeasible rights over the said property. However, it is not in doubt that the said title can be impeached if it is found to have been acquired unprocedurally or through fraud.

In this instant case, the 1st and 3rd Defendants have not established the root of their title and it is the Court’s considered view that the Plaintiff has proved how he acquired the suit property and the same was acquired procedurally.

However, despite the 1st Defendant producing documents indicating that **Chege Waweru** was the owner of the suit property, he failed to prove that the title deed to the suit property was acquired procedurally as there seems to be no evidence of the transfer and the resultant transaction to the 3rd Defendant was thus illegal.

Therefore, the Court finds and holds that Plaintiff is the bonafide owner of **Plot No. Ruiru West Block 1/1267, having acquired it from Adam Mumin (deceased)**, by virtue of a Limited Grant of Letters of Administration Ad litem.

(ii) Whether the Plaintiff is entitled to the orders sought

The Plaintiff had sought for amongst other prayers that the Court declares that the suit property belongs to the **estate of Adam Kimani**

Mumin Alias Adam Mumin, an order of cancellation/revoking of the title deed of the suit property and costs. This Court has already found and held that the manner in which the suit property was transferred to the 3rd Defendant was not proper and therefore the prayer by the Plaintiff to be declared as the rightful owner of the suit property is found proper and will therefore stand and succeed.

The Plaintiff urged the Court to cancel the title deed held and registered in the name of the 3rd Defendant in line with **Section 80** of the **Land Registration Act**. **Section 80 (1) of the Land Registration Act provides that: -**

“Subject to subsection (2), the Court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”

This Court holds and finds that the Plaintiff has discharged the onus of proving his case on a balance of probability. Since the Court already came to a conclusion that there was no due process in which the title was issued to the 3rd Defendant, there would therefore be no reason as to why the same should not be cancelled.

The Upshot of the foregoing is that the title held by the 3rd Defendant is illegal and therefore cancelled. However, the Court declares the Plaintiff as the rightful owner of the suit property.

Having now carefully considered the available evidence herein, the cited authorities and relevant provisions of the law and the rival written submissions, the Court finds that the Plaintiff has discharge the burden of proving his claim on a balance of probability. Consequently the Court enters judgement for the Plaintiff against the Defendants herein jointly and severally in terms of prayers no. **(a) (b) and (c)** of the Plaint dated **16th August, 2017**.

It is so ordered.

DATED, SIGNED AND DELIVERED AT THIKA THIS 30TH DAY OF SEPTEMBER, 2021.

L. GACHERU

JUDGE

Court Assistant – Kuiyaki