



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT THIKA**

**ELC CASE NO. 272 OF 2018**

**MUCHANGI NDUATI NGINGO ..... PLAINTIFF**

**VERSUS**

**SALOME NJOKI P NGANGA ..... 1ST DEFENDANT**

**MARY WANJA KAGUNDA ..... 2ND DEFENDANT**

**PETERSON MWANGI KIGOTHO ..... 3RD DEFENDANT**

**PETER MAINA THUNGUYU ..... 4TH DEFENDANT**

**PETERSON GITHAIGA MAINA ..... 5TH DEFENDANT**

***(Trustees Muthirimo wa Gakenye Self Help Group)***

**MBO-I-KAMITI FARMERS CO. LIMITED.....6TH DEFENDANT**

**THE NATIONAL LAND COMMISSION.....7TH DEFENDANT**

**JUDGMENT**

1. The plaintiff, **Muchangi Nduati Ngingo**, initiated this suit through a plaint dated 8/11/2018. He sought the following verbatim reliefs against the defendants:

***a) There be an inhibition and/or prohibitory order against the defendant restricting them, their servants or agents or any other person from dealing, registering, releasing or dealing in any way with Plot Nos Ruiru/Kiu Block 4/2038,***

***2039 and 2045, pending the hearing and determination of this suit.***

***b) There be a declaration that the (suit) plots lawfully belong to the plaintiff and all the necessary documents be registered and released to him forthwith.***

***c) There be a declaration that any transaction between the defendant and any third parties in respect of the suit plots Nos Ruiru/Kiu/Block 4/2038, 2039 and 2045 is null and void and subsequent registration of transfers in favour of the 1st to 5th defendants be revoked and the registers be rectified accordingly.***

***d) In the alternative, general damages for the loss of the plots.***

***e) Costs of this suit with interest at court rates.***

2. His case was that, at all material times, he was the lawful transferee of fifteen (15) plots, namely Ruiru/Kiu Block 4/2038, 2039, 2041, 2042, 2043, 2044, 2045, 2012, 2011, 2010, 2009, 2008, 2006, 1723 and 1726 legally allocated to him by the 6th defendant, **Mboi-I-Kamiti Farmers Co Ltd**, to cover part-payment of legal fees due and owing to him from the 6th defendant, for professional services rendered to the 6th defendant. He averred that upon allocation of the said plots to him by the 6th defendant, a formal agreement dated 15/6/2007 was duly executed by the two parties, for transfer of the said plots to him. Pursuant to the said formal agreement, the 6th defendant duly executed transfers conveying the 15 plots to him. The 6th defendant released all the original conveyance documents to facilitate conveyance of the

15 plots to him.

3. The plaintiff contended that all the files relating to the 15 plots were opened by the 7th defendant and the preparation of leases commenced. While the documents were with the 7th defendant awaiting finalization of the exercise, some files relating to the 15 plots would on several occasions be untraceable, prompting the Plaintiff to complain to the 7th defendant. It subsequently turned out that the 6th and 7th defendants had colluded with third parties and had prepared leases relating to some of the plots in favour of the third parties. Among the plots affected were Ruiru/Kiu Block 4/2045, 2038 and 2039 [the suit properties] which had been conveyed to the 1st; 2nd; and 3rd to 5th defendants, respectively. Aggrieved, the plaintiff brought this suit seeking the above reliefs against the defendants. He contended that the defendants acted fraudulently in procuring leases and conveying the said plots to the 1st; 2nd; 3rd - 5th defendants.

4. Service of summonses was effected through a notice in the print media pursuant to an order issued by Lady Justice Lucy Mbugua on 2/9/2020. None of the defendants entered appearance nor filed defence in the suit. Consequently, hearing proceeded ex-parte before me on 30/9/2021.

5. The plaintiff testified as PW1. He adopted his witness statement dated 8/11/2018 in which he outlined his case as summarized above. He produced the 22 documents contained in his bundle. He referred the court to the board resolution by the 6th defendant allocating him the 15 plots; the sale agreement dated 15/6/2007; payment receipts for land rates relating to the plots; parcel registers showing when they were opened and when the 1st; 2nd; and 3rd to 5th defendants were registered as proprietors; official searches relating to the three plots; and the judgment rendered by Okong'o J on 27/9/2018 in **Nairobi ELC No. 441 of 2009** in which the actions of the 6th defendant were adjudged unlawful. He urged the court to grant him the reliefs sought in the plaint.

6. The plaintiff subsequently filed written submissions dated 18/10/2021 through the firm of *R H Wanga & Company Advocates*. Counsel for the plaintiff submitted that in the absence of defence, the matters pleaded in the plaint were deemed admitted. Counsel added that the plaintiff's evidence was uncontroverted. Counsel contended that the plaintiff had proved his case and urged the court to award the plaintiff the reliefs sought in the plaint.

7. I have considered the plaintiff's pleadings and evidence. I have also considered the relevant legal framework and jurisprudence. This suit is undefended. The key question falling for determination, in the circumstances, is whether the plaintiff has satisfied the standard of proof under the law. Depending on the finding of the court on the above question, the consequential question would be whether the plaintiff is entitled to any of the reliefs sought in the plaint against the defendants.

8. It is noted from the exhibited judgement rendered by Okong'o J that the actions giving rise to this suit were the subject of adjudication in **Nairobi ELC 441 of 2009** in which Okong'o J made the following findings;

***“I am in agreement with the submissions by the plaintiff that after the 2nd defendant [Mboi-i-Kamiti Farmers Co Ltd] agreed to transfer the disputed properties to him and executed the instruments of transfer of leases in his favour in respect thereof, the 2nd defendant had no interest in the suit properties that it could transfer to third parties. The purported transfer of the disputed properties to the 3rd defendant was in the circumstances unlawful.”***

9. It is further noted from the above Judgment that Okong'o J declined to make any order in respect of Ruiru/Kiu Block 4/2045; 2038; and 2039 because the affected parties were not joined as parties to that suit. The plaintiff subsequently brought the present suit to ventilate his claim against the said parties. Regrettably, the parties whom the plaintiff contends were illegally registered as proprietors of the three properties elected not to enter appearance nor file defences.

10. Based on the above uncontroverted evidence tendered by the plaintiff, this court agrees with the plaintiff that the 6th defendant having allocated to him the three properties and having signed the relevant conveyance instruments in his favour, it had no residual interest in the three properties which it purported to convey to the 1st; 2nd; and 3rd - 5th defendants respectively. For the above reasons, I find that the plaintiff has proved his claim against the 1st; 2nd; 3rd - 5th; and 6th defendants and he is entitled to the orders sought against them. The 7th defendant was merely a processing agent undertaking a statutory mandate in relation to the suit properties which were subdivisions out of private land. I have not seen a proper basis for holding them liable.

11. On the plea for general damages, it does appear that the 6th defendant as the party who allocated the suit properties to the plaintiff; executed the agreement dated 15/6/2007; and subsequently executed conveyance instruments in favour of the plaintiff, knew that it had no residual interest in the suit property to convey to the 1st; 2nd; and 3rd - 5th defendants. The 6th defendant will in the circumstances bear general damages. The plaintiff did not lead evidence to assist the court in assessing general damages. I will in the circumstances award the plaintiff nominal general damages in the sum of Kshs 1,000,000 against the 6th defendant for the post-contract transgressions that they engaged in after they had conveyed the suit properties to the defendant.

12. In light of the above findings, I make the following disposal orders

***(a) A declaration is hereby made that Ruiru/Kiu Block 4/2045, Ruiru/Kiu Block 4/2038 and Ruiru/Kiu Block 4/2039 lawfully belong to the plaintiff and all the necessary documents should be registered and released to him forthwith.***

***(b) A declaration is hereby made that any transaction between the defendants and any third parties in respect of Ruiru/Kiu Block 4/2045, Ruiru/Kiu Block 4/2038 and Ruiru/Kiu Block 4/2039 is null and void and that the registration of transfers in favour of the 1st; 2nd; and the 3rd - 5th defendants are hereby revoked and the relevant parcel registers are hereby rectified to reflect the plaintiff as the owner of the above properties.***

***(c) The relevant Land Registrar is hereby ordered to effect the rectifications.***

*(d) The plaintiff is hereby awarded general damages of Kshs*

*1,000,000 against the 6th defendant for their post-contract transgressions.*

*(e) The plaintiff shall have costs of the suit to be borne by the 6th defendant.*

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 15TH DAY OF NOVEMBER 2021**

**B M EBOSO**

**JUDGE**

**In the presence of: -**

Mr Wanga for the Plaintiff

Court Assistant: Lucy Muthoni

**B M EBOSO**

**JUDGE**