



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELC NO. 33 OF 2018**

**ALICE WAMBUI MAINA MUTHAKA.....PLAINTIFF**

**-VERSUS-**

**MARGARET WANGUI WACHIRA.....DEFENDANT**

**NYERI LAND REGISTRAR.....INTERESTED PARTY**

**JUDGMENT**

**BACKGROUND**

1. By a Plaintiff dated 21<sup>st</sup> May, 2018 as amended on 29<sup>th</sup> June, 2018 and filed herein on 4<sup>th</sup> July, 2018, Alice Wambui Maina Muthaka (*the Plaintiff*) prays for Judgment against the Defendant and the Interested party for orders that:-

1. *The title to the suit property, that is Nyeri/Waraza/118 in possession of the Defendant be cancelled;*
2. *That the Interested Party (does) cause the (Title) to the suit property to revert back to the names of Wilson Mainah Muthaka;*
3. *Damages;*
4. *Mesne profits;*
5. *Costs; and*
6. *Interest.*

2. Those prayers are premised on the Plaintiff's submission that at all times material she was the only bona fide and legal wife to Wilson Mainah Muthaka (*now deceased*) who was the registered proprietor of the suit property. Sometime in February 2017, the Plaintiff carried out a search at the Nyeri Land Registry only to discover that the Defendant had presented forged documents to the Interested party upon which the suit property was transferred and registered in her name.

3. Margaret Wangui Wachira (*the Defendant*) and the Nyeri Land Registrar (*sued as the Interested Party*) neither entered appearance nor filed a Statement of Defence. This matter accordingly proceeded by way of formal proof.

**PLAINTIFF'S CASE**

4. At the trial herein, the Plaintiff called 2 witnesses who testified in support of her case.

5. PW1 – Alice Wambui Maina Muthaka is the Plaintiff herself. She told the court the suit property belongs to her late husband Wilson Mainah Muthaka who passed away on 12<sup>th</sup> August, 2016. The property was originally registered in the name of PW1's father-in-law and her husband obtained the same vide orders issued in Murang'a Principal Magistrates Succession Cause No. 42 of 2004.

6. PW1 testified that sometime in February 2017 when she visited the Area Chief to obtain a letter to file a succession cause for her late husband, the Chief informed her that he had seen some individuals view the land on several occasions. The Chief advised her to conduct a search on the ownership of the land.

7. PW1 told the court when she carried out a search, she was surprised to learn that the Defendant had presented forged documents to the Land Registry and caused the suit property to be transferred to her name on 30<sup>th</sup> September, 2016. PW1 collected all documents used in the fraudulent transfer and reported the matter to the Nyeri Directorate of Criminal Investigations (DCI) in March, 2017.

8. PW1 further told the court that the DCI conducted investigations after which they caused the Defendant together with another person to be charged in Nyeri CMCR. No. 352 of 2018. The charges against them included conspiracy to defraud, forgery and obtaining registration of land title by false pretences.

9. PW1 testified that after the accused persons took plea on 20<sup>th</sup> March, 2018, they absconded and a warrant of arrest was issued which remains in force to-date as the accused persons remain at large.

10. PW2 – Corporal Leftin Kibowen is a Police Officer currently attached to the DCI, Nyeri County. PW2 told the court the Plaintiff herein lodged a complaint with their office in regard to the suit property – claiming the same had been fraudulently transferred to the Defendant's name.

11. PW2 testified that he proceeded to obtain a number of documents from the Lands Office Nyeri including a copy of a title deed issued to the Defendant on 30<sup>th</sup> September, 2016. Upon conclusion of the investigations, PW2 preferred charges against both the Defendant and one Florence Waitherero Kariuki. The case is however yet to be concluded as the accused persons are at large. A warrant of arrest has been issued against them.

### **ANALYSIS AND DETERMINATION**

12. I have carefully perused and considered the Plaintiff's pleadings herein, the testimonies of the two witnesses as well as the evidence adduced at the trial. I have equally perused the submissions and authorities placed before the court by the Learned Advocate for the Plaintiff.

13. The Plaintiff has asked this court to cancel the title issued in the name of the Defendant for all that parcel of land known as Nyeri/Waraza/118 and that the Interested Party herein be directed to cause the said title to revert back to the name of the Plaintiff's husband, the late Wilson Mainah Muthaka.

14. It is the Plaintiff's case that the suit property was initially registered in the name of her husband who passed away on 12<sup>th</sup> August, 2016. In an effort to obtain Letters of Administration for the Estate of the deceased, the Plaintiff visited the Area Chief in February, 2017 to acquire the necessary papers to enable her institute a succession cause. It is the Chief who advised her to do a search on the ownership of the 18.0 Ha piece of land as he had seen some people visiting the land.

15. The Plaintiff told the court that when she conducted the search, she was surprised to find that the suit property had indeed been transferred and that a title deed was issued on 30<sup>th</sup> September 2016 in the name of the Defendant. The Plaintiff reported the matter to the DCI office Nyeri and following investigations the Defendant together with a third party were arrested and charged with offences of conspiracy to defraud, forgery and obtaining a title deed by false pretences.

16. As it turned out, the Defendant as well as the Nyeri Land Registrar sued as the Interested Party herein neither entered appearance nor responded to the Plaintiff's claim.

17. From the material placed before the court, it is apparent that the Defendant caused the suit property to be transferred to her name on the purport that she had purchased the same vide a Sale Agreement executed between herself and the Plaintiff's deceased husband on 15<sup>th</sup> April, 2016.

18. That Sale Agreement was purportedly prepared by one Gathii Irungi Advocate. In the course of the investigations into the Plaintiff's complaint of fraud, the DCI obtained a self-recorded statement from the said Advocate. That statement produced as Plaintiff exhibit 9 by the Police Officer who conducted the investigations reveals that the Advocate denied that he prepared the same. The said Advocate further states that the signature purported to be his own attesting to the signature of the parties to the transaction were a forgery.

19. The Investigations Officer (PW2) further told the court that upon conclusion of their investigations, they arrested the Defendant and charged her in Nyeri CMCR Case No. 352 of 2018. The Defendant and her co-accused one Florence Waitherero Kariuki however jumped bail and despite a warrant of arrest issued against them, they remain at large. As a result, the Defendant could not be traced for service herein and she was served by way of substituted service through an advertisement in the newspaper.

20. In the premises, the Defendant failed to come to court to explain how she had acquired the title for the suit property in her name barely a month after the Plaintiff's husband passed away.

21. From the material placed before me and there being no other evidence or testimony to controvert the same, I am persuaded that the Defendant's title was obtained by way of fraud as stated by the Plaintiff and that the Plaintiff had proved her case on a balance of probabilities.

22. However while the Plaintiff had also prayed for damages and mesne profits, I did not find any evidence in support of such claims and I decline to award the same.

23. In the result, I make orders as follows:

1. *The title to the suit property, that is Nyeri/Waraza/118 which is in the name and possession of the Defendant herein is hereby revoked and cancelled.*

2. *The Registrar of Land, Nyeri is hereby directed to cancel the registration and to have the title revert back to the name of Wilson Mainah Muthaka.*

3. *The Defendant will bear the costs of this suit.*

**JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 16TH DAY OF DECEMBER, 2021.**

**In the presence of:**

Mr. Muturi for the Plaintiff

No appearance for the Defendant

Court assistant - Wario

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**J. O. Olola**

**JUDGE**