



REPUBLIC OF KENYA

IN The ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 92 OF 2017

RICHARD NGUU NGIGI.....PLAINTIFF

VERSES

FRANCIS MAINA GAKUU.....DEFENDANT

JUDGMENT

1. The Plaintiff instituted this suit vide a plaint dated 19/05/2017 and Amended on 19/06/2017 seeking the following orders;

A. A declaration that the registration of the defendant as the owner of land parcel number MWEA/NGUCWI/770 was illegal, irregular, unlawful, and fraudulent and/or done with mistake.

B. An order for cancellation of the registration of the defendant as the owner of the land parcel number MWEA/NGUCWI/770, and for the name of the Plaintiff to be reinstated as the owner of the land.

C. Costs of the suit with interest

2. The Defendant filed a statement of defence dated 16/10/2017 and Amended on 06/03/2019, denying the Plaintiff's claim. The parties thereafter filed their compliance document under **Order 3, 7, and 11 of the Civil Procedure Rules.**

3. PLAINTIFF'S CASE

On 11/03/2021, the plaintiff gave his testimony and stated that the suit land Parcel Number MWEA/NGUCWI/770 belongs to him after he acquired through succession cause on 17/06/2002. He stated that he has been in exclusive possession of the same. The Plaintiff further stated that unknown to him, his registration as the owner of the suit property was cancelled on 26th March 2008, pursuant to a decree allegedly issued in Murang'a CMCC no. 285 of 2007. When he learnt of the development, he reported the matter at Kerugoya Police Station whereby the Defendant was arrested and charged with the offence of fraudulent transfer of his land. The Executive Officer, Murang'a Law Courts was summoned as a witness and he brought the relevant court files in respect of the suit property. In all the files produced, there was no mention of his name, that of the defendant or the suit property. After the prosecution closed its case, the defendant was found with a case to answer and was put on his defence. In his defence, the Defendant disowned the court orders saying that he had not worked in Murang'a Law Courts and that he had never been on the suit land. At the conclusion of the trial, the court acquitted the Defendant/Accused on grounds that the prosecution had not proved the element of willful procurement of registration as the Defendant pleaded ignorance of the transactions.

4. DEFENDANT'S CASE

The Defendant testified on 21/10/2021 and adopted his witness statement dated 16/10/2017 in his evidence. He reiterated his averments contained in his witness statement that the allegations of fraud were tried in Kerugoya Criminal Case No. 251 of 2012 where he was charged and acquitted by the trial court on 02/11/2016. He further stated that the Plaintiff herein who was the complainant did not prefer an Appeal against the acquittal. He produced a copy of the criminal proceedings as an exhibit in this case.

5. LEGAL ANALYSIS AND DECISION

I have considered with anxious care the testimony by both the Plaintiff and the Defendant who are acting in person. I have also considered the produced by the parties in their evidence. The Plaintiff's claim is for cancellation of the registration of the defendant as proprietor of the suit land parcel No. MWEA/NGUCWI/770 and reinstating the plaintiff as the owner.

The law contemplates two scenarios where a title of a proprietor can be cancelled **Section 26(1) of the Land Registration Act, no. 3 of**

2012. The said section provides as follows;

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all Courts as *prima facie* evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except-;

(a) On the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

6. In the first scenario, the person who wishes the court to find in his favour must prove that the proprietor of the title in dispute was indeed a party to the commission of the alleged fraud while the proprietor need not be shown to have been a party in the second scenario. Where a title is being challenged under the second scenario, the proprietor of such title under attack has an obligation to assist the court to demonstrate the process and manner in which he acquired such a title. It is not enough for him to dangle the very same title under attacks as proof of his ownership. The question this Honourable Court needs to determine is whether the title in dispute was acquired legally, procedurally or through a corrupt scheme.

7. The Plaintiff in his evidence stated that he was the registered owner of the suit property land parcel no. MWEA/NGUCWI/770 after he acquired on 17th June 2002 until he discovered that the Defendant registered as proprietor pursuant to a Decree in Civil Case No. 285 of 2007 and 282 of 2007 (Murang'a) which decrees were non-existent. The Plaintiff further narrated how he reported the Defendant to Kerugoya Police Station where after investigations, he was arrested and charged with fraudulent transfer of the suit land. However, the defendant was acquitted after being placed on his defence for failure to prove the case beyond reasonable doubt under **Section 215 Criminal Procedure Code**.

8. I have looked at the proceeding and the judgment by the trial Magistrate in Criminal Case No. 251 of 2012 produced by the parties in this case (Kerugoya). One of the prosecution witnesses in that case was No. 83906, P.C Nicholas Chigiri based at Kerugoya Police Station. He was the Investigating Officer and stated that after he received a report from the complainant on 13/03/2005 concerning the suit land, he visited the Lands Office where he obtained used to effect the transfer of the suit property in favour of the Defendant herein. He then wrote to the Court and it was confirmed that the said documents presented to the Land Registry were not genuine. He then charged the defendant herein with the criminal offence of fraudulent registration.

9. The defendant did not say much in his defense but relied heavily on the Judgment in the criminal trial Case No. 251 of 2012 where he was acquitted under **Section 215 Criminal Procedure Code**.

10. It is imperative to note at this juncture that the standard of proof in a criminal trial is beyond reasonable doubt while the standard required in civil claims is one that is slightly lower but higher than a balance of probabilities. Having considered the evidence tendered by the Plaintiff in this case and considering that the Defendant did not file a counter-claim against the Plaintiff's claim, I am satisfied that the Plaintiff has proved that his land Parcel No. MWEA/NGUCWI/770 was acquired by the Defendant herein illegally, unlawfully and fraudulently. The Plaintiff has demonstrated that the Defendant caused cancellation of his name from the title to the suit land using forged and/or non-existent Decree in CMCC NO. 285 of 2007 and CMCC NO. 282 of 2007(Murang'a) and removal of a caution to facilitate the registration of his name as the owner of the suit land. The upshot of my finding is that the Plaintiff has proved his case on the required standard

11. CONCLUSION

In view of the matters aforementioned, I enter Judgment for the Plaintiff against the defendant as follows;

- 1) A declaration that the registration of the defendant as the owner of land parcel number MWEA/NGUCWI/770 was illegal, unlawful and fraudulent.
- 2) An order for cancellation of the registration of the defendant as the owner of land Parcel No. MWEA/NGUCWI/770, and for the name of the Plaintiff to be reinstated as the owner of the land.
- 3) The Land Registrar, Kirinyaga County is directed to rectify the register of the suit land Parcel No. MWEA/NGUCWI/770 to reflect the Plaintiff, RICHARD NGUU NGIGI as the rightful owner.
- 4) The costs of this suit shall be borne by the Defendant plus interest at court rates.

READ, DELIVERED AND SIGNED IN THE OPEN COURT AT KERUGOYA THIS 10TH DECEMBER, 2021.

HON. E.C CHERONO

ELC JUDGE