



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC APPEAL NO. 10 OF 2019

ROSALINE NJERI NDUNGU.....APPELLANT

-VERSUS-

KEZIAH WAIRIMU ZACHARIA.....1ST RESPONDENT

ROBERT JAMES GITHUNGO MAINA.....2ND RESPONDENT

JUDGMENT

1. This Judgment is on the Appeal against the Judgment delivered on 26th November, 2018 by Hon. Kasera in Kajiado Magistrate's Court Case No. 300 of 2013 where the second Respondent Robert James Githungo Maina was the successful party.

2. In the Lower Court's Judgment the second Respondent was awarded LR NGONG/NGONG/59597 while the Appellant Rosaline Njeri Ndung'u was awarded LR NGONG/NGONG/57598.

3. Aggrieved by the decision of the Lower Court, the Appellant filed a memorandum of Appeal dated 11th November, 2018. In the said Memorandum seven (7) grounds are listed as follows;

i. The Learned Magistrate erred in failing to appreciate that there was no agreement between the first and second Respondents in respect of LR NO. NGONG/NGONG/57597.

ii. The Court failed to appreciate that L.R. NGONG/NGONG/57595 was validly sold to the Appellant and the land was lawfully transferred to her.

iii. The Court failed to appreciate that the second Appellant bought unspecified land from one John Saitoti Shuguru who the Appellant never sued.

iv. That the Court erred in failing to note that the Appellant is the indisputable owner of L.R. NGONG/NGONG/57597 and that she was given a title deed.

v. That the Court erred in holding that the first Respondent did not pass good title to the Appellant yet she is the one who sold the land.

vi. The Court erred in holding that L.R. NO. NGONG/NGONG/57597 belonged to the second Respondent when there was no sale agreement that L.R. NO. NGONG/NGONG/57598 belonged to the Appellant and in the absence of privity of contract between the first and second Respondent.

vii. The Court erred in holding that the Appellant should surrender the Title Deed that she has and that it be revoked and move out of L.R. NGONG/NGONG/57597 for the second Respondent to take possession whereas she bought the said property from the first Respondent and paid the full purchase price, took possession which she enjoys to date and never been charged nor convicted on any Criminal Court for any fraud in respect of the said sale.

For the above reasons, the Appellant prays that the Appeal be allowed and the second Respondent's suit ie *Kajiado CMCC 300/2013* be dismissed. She also prays for costs,

4. Counsel for the parties filed written submissions on 10th March, 2021, 3rd May, 2021 and 7th July, 2021 in the order of Appellant's, first Respondent and second Respondent respectively.

5. Counsel for the first Respondent urged that the agreement was between the right parties one being the Administrator of the Estate of the deceased and the other being the second Respondent and the trial Magistrate was faultless.

Regarding the other grounds, Counsel said that the agreement dated 19/8/2021 did not state the suit parcel that mentioned the larger one which was to be subdivided namely NGONG/NGONG/39093; that there is sufficient evidence that the Appellant was buying LR NGONG/NGONG/57598 which she was shown on the ground before it got the number and the Magistrate appreciated this fully; that the Appellant is not the undisputed owner because a suit was filed to challenge her title to the land; that a title can be challenged on grounds spelt out in **Section 26** of the **land Registration Act** among other points.

6. Counsel for the Second Respondent has supported the decision of the Learned Trial Magistrate and said that all was well until G.M. Nyambati and the Appellant swapped the titles and caused the transfer of the Appellants' land to the second Respondent and vice versa.

7. Counsel for the Appellant in his submissions reiterated the same issues raised in the Memorandum of Appeal especially who is the undisputed owner of which parcel and the issue of privity of contract.

8. I have carefully considered the entire Appeal including the memorandum, the record, the submissions and the case law in the submissions.

The dispute, according to the respondents arose only on paper because on the ground, the second Respondent and Appellant had been shown their respective parcels which neighbor each other.

According to them, it is the Appellant and G.M. Nyambati & Co. Advocates who caused this problem and they did it deliberately.

The Appellant does not agree with this. She said that though she bought the land one year after the second Respondent, she was shown the better parcel which had no seasonal river cutting across it.

I find this to be the crux of the matter in this case. I also make the following findings;

9. Firstly, I find that there was a valid agreement between the second Respondent and one John Saitoti Shuguru. This was on 10/6/2010. By the time of the agreement, the second Respondent had already been shown the land on the ground. That agreement was valid and the trial Magistrate made no error

Secondly, I find that the land sold to the Appellant was shown to her on the ground and it later became L.R. NGONG/NGONG/57598. The trial Magistrate made no error.

Thirdly, that the land was specified on the ground is not in doubt. The trial Magistrate made no error in this regard.

Fourthly, I find that the Appellant was not the undisputed owner of the suit land because the dispute started on the office of the G.M. Nyambati & Co. Advocates, to the Police Station, to the Tribunal and eventually ended up in the Magistrate's Court. The dispute continues here now. The Magistrate made no error.

Fifthly, the trial Magistrate did not fault the first Respondent Title to the suit land. In fact she affirms because she found that good title could pass to both the Appellant and the second Respondent.

Finally, I find that the Appellant and the advocate G.M. Nyambati & Co. Advocates colluded to deprive the second Respondent of his land number NGONG/NGONG/57597 which he had already occupied. The Appellant cannot therefore be heard to say that she has a good title to land that does not belong to her.

I affirm the decision by the Learned Trial Magistrate with a few amendments as follows;

a. Title Numbers NGONG/NGONG/57597 and NGONG/NGONG/57598 revoked.

b. The first Respondent to transfer the land as follows;

i. NGONG/NGONG/57597 to the second Respondent

ii. NGONG/NGONG/57598 to the Appellant

c. Appeal dismissed with costs to the Respondents who will also get the costs of the Lower Court as against the Appellant.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 8TH DAY OF DECEMBER, 2021.

M.N. GICHERU

JUDGE