



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
ENVIRONMENT AND LAND COURT AT MILIMANI
ELC CASE NO. E120 OF 2020

PETER GICHERU MUNGAI.....PLAINTIFF

-VERSUS-

LANDLINE QUESTS LIMITED.....DEFENDANT

JUDGMENT

INTRODUCTION

1. Vide the Complaint dated the 3rd Day of September 2020, the Plaintiff herein has sought for the following Reliefs:

- a) *A Declaration that the plaintiff is the rightful and legitimate owner and proprietor of all that property known as L.R. No. Nairobi/Block122/126.*
- b) *The Chief Land Registrar be and is hereby directed to cancel and remove all entries in respect of L.R. No. Nairobi/Block122/126 removing the names of Landline Quest Limited and substitute the same with the Plaintiff herein, Peter Gicheru Mungai, subject to usual ownership documentation and statutory charges.*
- c) *Cost of the suit be provided for and any other relief that this Court may deem fit to grant.*

2. The Complaint and summons to enter appearance, were duly served upon the Defendant, but despite service, the defendant herein failed and/or neglected to enter appearance and/or file a statement of Defence.

3. Owing to the failure by the Defendant to file the statement of Defence, the Plaintiff filed necessary evidence of service, authenticating service and thereafter sought for the subject matter to be fixed for formal proof as against the Defendant.

4. Upon being satisfied with the contents of the Affidavit of service, the Court ordered and/or directed that the matter be listed for formal proof on the 1st of December, 2021. For clarity, the formal proof indeed took off and the Plaintiff testified before the Court as the single witness for and behalf of the Plaintiff's case.

EVIDENCE BY THE PARTIES

THE PLAINTIFF'S CASE

5. The Plaintiff testified and stated that same is the lawful and legitimate owner over and in respect of all that parcel of land known as L.R. No. Nairobi/Block122/126, located within Kasarani area, within the city of Nairobi.

6. It was the Plaintiff's further testimony that same bought and/or purchase the suit property from one Agnes Wanjiku Maina, who was a shareholder of Chicken and Eggs Dealers Society, which society had purchased a huge parcel of land, for and on behalf of its members.

7. It was the Plaintiff's further testimony that following the purchase of the suit property from one Agnes Wanjiru Maina, same was granted and/or handed various documents signifying that he, the Plaintiff, was now the lawful owner of the Property.

8. It was the Plaintiff's further testimony that despite his purchase and/or acquisition of the suit property, same discovered that the land had been illegally and unlawfully transferred to and registered in the name of the Defendant.

9. Nevertheless, the Plaintiff further testified that the transfer and registration of the suit property in the name of the Defendant was unlawful and illegal and in this regard, the director of the Defendant Company, namely, Mr. Paul Ng'ang'a Nyaga, swore an Affidavit where same admitted that the suit property belonged to the Plaintiff.

10. Owing to the foregoing the Plaintiff therefore contended that the transfer and registration of the suit property in the names of the Defendant was therefore unlawful and illegal. Consequently, the Plaintiff implored the Court to grant the Reliefs at the foot of the Plaintiff.

DEFENDANT'S CASE

11. As *hitherto*, the Defendant herein neither entered appearance nor filed any statement of defence. In this regard, the subject matter proceeded for formal proof, without any opposition to the Plaintiff's case.

12. In the premises, the Plaintiff's testimony was neither controverted nor challenged, in any manner whatsoever.

SUBMISSIONS BY THE PARTIES

13. Upon the close of the Plaintiff's case, the Plaintiff's Counsel informed the court that same was not keen or intent on filing submissions. The Plaintiff's Counsel thereafter invited the Court to craft or enter a judgment on the basis of the Evidence and the Documents tendered in evidence.

ISSUES FOR DETERMINATION

14. Having considered the Plaintiff dated the 3rd of September 2020, the witness statement, as well as the evidence tendered by the Plaintiff, the following issues are germane for determination;

i) *Whether the Plaintiff herein is the lawful proprietor of the suit property.*

ii) *Whether the suit property was lawfully registered in the name of the Defendant and if not, whether same ought to be cancelled..*

ANALYSIS AND DETERMINATION

ISSUE NUMBER ONE

15. The Plaintiff testified and adduced evidence, whereby same confirmed and/or authenticated that he, the Plaintiff, entered into a lawful land sale agreement with one, Agnes Wanjiku Maina, who thereafter handed over the documents touching on and/or concerning the suit property to and in favor of the Plaintiff.

16. It was the Plaintiff's further testimony that before entering into and/or executing the Land Sale Agreement, same confirmed that the vendor, namely Agnes Wanjiku Maina, was the registered owner of the suit property.

17. Suffice it to say, that the evidence of the Plaintiff, pertaining to the entry into and/or execution of a lawful Sale Agreement, over and in respect of the suit property was neither challenged nor controverted.

18. In the premises, I am compelled and/or obliged to accept the Plaintiff's Evidence and to find and hold that the Plaintiff has laid before the court credible evidence to confirm that same is the lawful and the legitimate owner of the suit property.

ISSUE NUMBER TWO

Whether the Title in favor of the Defendant was lawfully obtained and if not, whether same ought to be Cancelled.

19. Having found and held that the Plaintiff herein lawfully bought and purchased the suit property, the Plaintiff was therefore entitled to the registration and thus ownership of the suit property.

20. However, prior to and/or before the suit property could be transferred to and registered in the name of the Plaintiff, the suit property somehow got to be transferred and registered in the name of the Defendant herein.

21. Be that as it may, the Plaintiff tendered evidence to show that one, Paul Ng'ang'a, who is the director of the Defendant company, swore an Affidavit, whereby same conceded and/or confirmed that the suit property lawfully belongs to the Plaintiff.

22. Owing to and based on the deposition, by the Defendant's director, that the suit property belongs to the Plaintiff, it is therefore imperative to find and hold that the transfer and registration of the suit property in the name of the Defendant's company, was therefore informed by fraud and/or illegality.

23. In this regard, I find and hold that the transfer and registration of the suit property in the name of the Defendant, could not have been procured by any legitimate means, save for illegality and/or a corrupt scheme which vitiated the legality, validity and/or propriety of the Title in respect therefore.

24. In any event, the Defendant herein was duly served with the Plaintiff's summons to enter appearance and was thus availed an opportunity to justify the process leading to the procurement and issuance of the Title in respect of the suit property, but same spurned the opportunity to do so.

25. Owing to the foregoing, the only inference that can be drawn from the refusal to participate in the proceedings, is that the Defendant knew and/or had reasons to believe that her Title was illegal.

26. Nevertheless, it is important to note that the fact of ownership and holding of a Title document by itself, is not enough. For clarity, the holder of the Title document, which is being challenged, is obliged to tender before the Court, evidence to show the process of how that Title was obtained. For clarity the owner of the Title must justify its validity.

27. In support of the foregoing observation, I adopt and restate the position of the law as underscored vide the decision in the case of **Munyua Maina vs Hiram Gathiha Maina [2013] eKLR**, where the Honourable Court of Appeal held as hereunder,

' We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.'

28. For emphasis only, it is also worthy to note that the foregoing position of the law was also restated by the Court of Appeal in the decision in the case of **Elizabeth Wanjiru Githinji and 29 Others Versus Kenya Urban Roads Authority [2019] eKLR**, where the Honourable Court Of Appeal per Justice Otieno Odek, JA, [as he then was] held as hereunder:

'I am convinced and persuaded by the merits and reasoning in the local and comparative jurisprudence that a title under the Torrens system is defeasible on account of mistake, misrepresentation, fraud and illegality. For this reason, it is not sufficient for the appellants to wave an RLA or RTA title and assert indefeasibility.

'If a mistake is proved or total failure of consideration or other vitiating constitutional or statutory factors, an RLA or RTA title is defeasible.'

29. As pertains to the subject matter, the Defendant was offered an opportunity to justify the legality of her Title, but, however no justification was forthcoming.

30. Conversely, the Plaintiff has tendered sufficient evidence to show that indeed the suit property belongs to him, and this evidence has not been controverted.

31. In the premises, I find and hold that the Title registered in the name of the Defendant, was procured and obtained in an unlawful manner. Simply put, the same is tainted with illegality.

FINAL DISPOSITION

32. Having dealt with and/or addressed the issues enumerated herein before, I come to the conclusion that the Plaintiff has proved his case on a balance of probabilities. Consequently, I am persuaded to enter judgment in favor of the Plaintiff, which I do as hereunder:

i) An Order of declaration be and is hereby granted that the Plaintiff is the rightful and legitimate owner and proprietor of all that property known as L.R No. NairobiBlock122/126.

ii) The Chief Land Registrar be and is hereby directed to cancel and remove all entries in respect of L.R. No. Nairobi/Block122/126, removing the names of Landline Quest Limited and substitute the same with the Plaintiff herein namely, Peter Gicheru Mungai, as the lawful owner thereof, subject to the usual ownership documentation and statutory charge.

iii) Cost of the suit be and are hereby awarded to the Plaintiff.

33. It is so Ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF DECEMBER 2021.

HON. JUSTICE OGUTTU MBOYA

JUDGE

ENVIROMENT AND LAND COURT.

MILIMANI.

IN THE PRESENCE OF;

June Nafula.....Court Assistant.

Mrs. Ngugi Advocate for the Plaintiff.