



REPUBLIC OF KENYA
IN THE ENVIROMENT AND LAND COURT
AT KERUGOYA

ELC CASE NUMBER 374 OF 2013

LAZARUS MITHAMO NDORO.....PLAINTIFF

VERSUS

GICHOBI GEORGE.....DEFENDANT

JUDGMENT

1. The Plaintiff instituted this case vide a plaint dated 19/02/2008 and Amended on 17/03 2020 in which he is seeking the following orders;
 - a. A declaration that the subsequent registration of land parcel No. KABARE/MIKAKARA/589 in the Defendants name was illegal, null and void.
 - b. The Land Registrar, Kerugoya District(sic), be ordered to cancel the entries in number 7, 8 and 9 of the Register to land parcel No. Kabare/Mikarara/589 and the land to revert back to the Plaintiff.
 - c. That the Defendant, his family members, servants and/or agents be forcefully evicted from the land parcel No. Kabare/Mikarara/589 to give vacant possession to the plaintiff.
 - d. The O.C.S Kerugoya Police Station do provide security for the eviction exercise.
 - e. That the cost of the suit be ordered against the Defendant
 - f. Any other or better relief this Honourable Court deem fit to grant.

The Defendant filed a statement of defence dated 16th November, 2020.

2. PLAINTIFF'S CASE

The Plaintiff testified as PW1 on 1/7/2019 and stated that the Defendant refused to vacate from the suit property which he bought from his Father, one George Mangoti. He stated that he bought the suit land in the year 2006 and paid the full purchase price in the year 2007. They even went to the Land Board where they were issued with consent to transfer. He was referred his witness statement recorded on 25/09/2015 which he adopted in his evidence. The witness further stated that he later came to learn that the Defendant herein took his father to Land Disputes Tribunal where he was not a party. He now wants this court to cancel the name of the Defendant and be substituted with his name as the proprietor. The Plaintiff also wants the Defendant and his family to be evicted from the suit property. He alleged that he obtained title to the suit land on 02/08/2007. He further stated that the Defendant was not there when he obtained title to the suit land and that when he filed this suit, he did not know that the Defendant had been issued with a title deed in respect of the same parcel of land. The Plaintiff also stated that according to the certificate of official search he obtained, it shows that the Defendant went to the tribunal where he obtained an order which he used to register himself as proprietor.

3. PW2 was one Boniface Gitari Mira. He was referred his witness statement recorded on 13/08/2019 which he adopted in his evidence. In his testimony, the witness stated that he knew the Plaintiff in this case after the Defendant's father, one George Mangore told him that he had sold a parcel of land to him(plaintiff). The witness also confirmed that he bought land from the said George Mangore. He used to visit the Defendant's Father to borrow him a bricks machine which he owned and the said George Mangore could tell him that he had a parcel of land he was desirous of selling. He once accompanied the Plaintiff to the suit land and on the way they met the Defendant's mother who asked the Plaintiff whether he had allowed someone to use his land. The Plaintiff answered in the negative. The Defendant's mother confirmed in her presence that the Plaintiff had completed paying the purchase price and that the plaintiff did not owe them any monies. In cross-examination, the witness stated that he was not a witness in the sale of the suit land between the plaintiff and the Defendant's Father.

4. DEFENDANT'S CASE

The Defendant was referred his witness statement dated 13/07/2013. He stated that he came to know the Plaintiff after he filed the suit herein. He stated that he has lived on the suit land with his family since he was a young boy. He further stated that when his father subdivided the suit land number Kabare/Mikarara/589 for his children, he was given his portion where he lives with his family. He stated that he is not aware of any sale of the suit land by his father to the Plaintiff as the same is registered in his name. He stated that he had sued his father in the Land Disputes Tribunal where the Tribunal gave an order that the suit land belonged to him. He further stated that the award by the tribunal was subsequently adopted by the Magistrate's Court. He later took the decree to the lands office where he was registered as proprietor of the suit land.

5. PLAINTIFF'S SUBMISSIONS

The Plaintiff through the Firm of Agnes Wanjku Maina & Company Advocates submitted on four issues. First, on whether the cancellation of the plaintiff's certificate of title to L.R No. Kabare/Mikarara/589 was procedural and whether the plaintiff was condemned unheard in GICHUGU LANDS DISPUTE TRIBUNAL COURT CASE No. 24/2007 and S.R.M's Kerugoya Case L.D.T No. 8 of 2008 rendering the award and subsequent orders null and void *ab initio*. On this issue, the learned Counsel argued that according to the green card dated 08/11/2009, the plaintiff's certificate of title was cancelled vide a court order pursuant to L.D.T. No. 8 of 2008 and the defendant was issued with a new title on 25/08/2010. She contends that the matter in Gichugu Tribunal No. 24/2007 proceeded in the plaintiff's absence that eventually led to the cancellation of his title deed to the suit property. She cited HALSBURY'S LAW OF ENGLAND 5th Edition Vol. 61 page 539 on the *audi alteram partem*. The learned counsel also referred to the case of **REPUBLIC V THE HON. CHIEF JUSTICE OF KENYA & OTHERS EX-PARTE MOIJO MATAIYA OLE KEIWA NAIROBI H.C.M.C.A. NO. 1298 OF 2004** and **MACFOY V UNITED AFRICA COMPANY LTD (1961)3 ALL ER 1169**.

6. The second issue is whether the Gichugu Lands Tribunal Court Case No. 24/2007 lacked jurisdiction in respect to the determination of ownership of the suit land. On this one the Learned Counsel argued that from the proceedings to the Gichugu Land Disputes Tribunal, the Tribunal's award demanded that the Defendant herein, George Kabiro Mangore, does allocate another portion of land to the Plaintiff and leave the suit land to the Defendant in this matter. According to her, it is evidently clear from the repealed Land Disputes Tribunal that the tribunal lacked jurisdiction and thus the subsequent award is rendered null and void *ab initio* as the tribunal acted *ultra vires*.

7. THE DEFENDANTS SUBMISSIONS

The Defendant who is acting in person made brief submissions and argued that it is trite law that parties are bound by their pleadings. The Defendant further submitted that from the pleadings and proceedings, the Plaintiff admitted that the Defendant obtained the title deed pursuant to a decree issued by court upon adoption of the Tribunal's award as an order of the court. He submitted that there is no express prayer sought in the plaint to declare the award and the subsequent decree as illegal for lack of jurisdiction. He cited the case of **FLORENCE NYABOKE MACHANI -V-MOGERE AMOSI OMBUI & 2 OTHERS (2014) e KLR**. He argued that this Court has not been invited to interrogate the competence or otherwise of the award and the Decree, in the prayers in the plaint. That the Decree was issued by a Court of competent jurisdiction and that the same has not been set aside or appealed against. That it remains binding, issue of jurisdiction notwithstanding. In conclusion, the defendant submitted that the issues raised in the submissions are against the wrong party since the Hon. Attorney General has not been joined and that those issues have not been raised in the body of the plaint or the prayers in the plaint. As a parting shot, the defendant submitted that the plaintiff purported to purchase land that was already occupied. He never did due diligence and that he has himself to blame for being gullible.

8. ANALYSIS AND DECISION

I have considered the pleadings the proceedings and the testimony by the parties. I have also considered the submissions by the parties. In my view, the following distill as issues for determination;

1. Whether the Plaintiff has proved his case to the required standard?
2. Whether the Defendant's title to the suit land is liable to be cancelled?
3. Who will bear the costs of this case?

Whether the Plaintiff has proved his case to the required standard?

The Plaintiff in this case is seeking an order for inter- alia cancellation of the Defendant's title to land parcel no. KABARE/MIKARARA/589 and the land to revert back to his name. The Defendant was registered as proprietor of the suit land pursuant to a court order issued in the Land Disputes Tribunal which was later adopted by Magistrates in the Senior Resident Magistrate's Court (Kerugoya) in LDT No. 8 of 2008. The proceedings and Court order vesting the suit property in the name of the defendant was produced in evidence. The Defendant has also a copy of title and certificate of official search showing that the Defendant is the registered proprietor. **Section 26 of the land Registration Act No. 3 of 2012** provides only two ways a certificate of title can be cancelled. First is on grounds of fraud or misrepresentation to which the owner is proved as a party. The second scenario is where a certificate of title has been obtained illegally, unprocedurally or through a corrupt scheme.

9. I have looked at the Amended Plaint and find that the Plaintiff is not seeking cancellation of the Defendant's title on any of the grounds provided under **Section 26 of the Land Registration Act**. The Plaintiff did not even join the trial Magistrate Court which issued the impugned decree cancelling the Plaintiff's title or the Chief Registrar of the Judiciary. It is trite Law that decisions of a Court such as the one which issued the decree in question can either be appealed against or an aggrieved party can seek for a review. For all the reasons I have given herein above, I find that the Plaintiff has not proved his claim against the defendant on the required threshold. Consequently, this suit is

dismissed with cost to the defendant. Orders accordingly.

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

HON. E.C. CHERONO

ELC JUDGE