



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 308 OF 2017

ROBINSON KIANO WANGENYE	-	PLAINTIFF
VS		
STANLEY KAMAU CHEGE	-	1ST DEFENDANT
CHAIRMAN LAND CONTROL		
BOARD KAHURO	-	2ND DEFENDANT
LAND REGISTRAR- MURANG'A	-	3RD DEFENDANT
NANCY WANGARI CHEGE	-	4TH DEFENDANT

JUDGMENT

1. The Plaintiff filed suit on the 3/5/2016 against the Defendants. On the 14/5/18 the plaint was amended.
2. The Plaintiff sought the following orders;
 - a. The 1st Defendant be evicted from the LOC10/KAHUTI/2965 (suit land) and for orders to cancel the title deed and the land to revert to the Plaintiff herein. A permanent injunction preventing the Defendants or any other person from interfering with the suit land.
 - b. The 2nd Defendant be investigated on how he granted a letter of consent to the 1st Defendant without the knowledge of the Plaintiff or any other family members
 - c. The 3rd Defendant be ordered to produce the relevant documents relating to how the land was transferred from a deceased person to the 1st Defendant.
 - d. The costs of the suit be provided
 - e. Order for mesne profits in respect of the benefits drawn by the 1st Defendant from the suit land for the period of occupancy until surrender thereto to the Plaintiff.
 - f. General damages against the 1st and 4th Defendant for trespass.
3. The Plaintiff avers to be the owner of the suit land, given to him by his father Abiniel Wangenye Kimani as a gift but died before transferring the suit land to the Plaintiff.
4. That the 1st Defendant obtained title for the suit land through fraud without the knowledge of the Plaintiff. That the 1st Defendant is not entitled to inherit the land from the estate of Abiniel Wangenye Kimani. Despite demand in writing the 1st Defendant has refused to vacate the suit land which he has occupied since 2010 to date.
5. That the 3rd Defendant collaborated in the fraud and issued the 1st Defendant with a letter of consent from the Land Control Board. The 3rd Defendant declined to issue the Plaintiff with a copy of the green card for the land.

6. The 4th Defendant, he avers, together with the 1st Defendant obtained consent through fraud without having been registered owner of the land.

7. By way of an amended defence the 1st Defendant denied the Plaintiffs claim. He stated that the suit land was owned by the father of the Plaintiff who subdivided it into 5 portions and allocated his children during his lifetime, out of which the suit land was to go to the Plaintiff.

8. He contended that the Plaintiff sold the suit land to the 4th Defendant who in turn sold to him for valuable consideration and without notice of any defect. He denied the allegations of fraud. He avers that the Plaintiff attended the Land Control Board meeting where consent to transfer was issued to the parties and therefore the allegations of fraud are untenable.

9. The 2nd and 3rd Defendants neither entered appearance nor filed a defence.

10. The 4th Defendant denied the Plaintiffs claim and adopted the defence of the 1st Defendant to a large extent.

11. At the hearing of the suit the Plaintiff led evidence and informed the Court that the land was given to him by his late father upon subdivision of his original land parcel No LOC.10/KAHUTI/1556 into 5 portions which he distributed to his 5 children in his lifetime. The suit land is the parcel that went to him. That on the 1/12/1993, his father signed 4 transfers in respect to the portions of the land to his siblings with the exception of the suit land as the Plaintiff was then admitted in Kenyatta National Hospital. That on the 21/12/1993 his late father obtained a consent to transfer the suit land to the Plaintiff by way of a gift. The consent was produced in evidence. That on the 28/10/2010 another letter of consent to transfer was issued to the 1st Defendant long after his father had passed away. That the transfer dated the 17/8/2010 is fraudulent because by then his late father who purportedly signed the transfer had passed on.

12. Further he informed the Court that he discovered the fraud in 2016. That he leased a small portion of the suit land to the 4th Defendant in 2010 to grow nappier grass. He stated that he never sold the suit land to the Defendants. He stated that he was admitted in Hospital and only filed the suit in 2016 although he did not adduce any evidence to support his averment. That he was not paid any purchase price by the 1st and 4th Defendants. He stated that the 1st and 4th Defendants have not been charged with any land fraud as he did not report any case of forgery.

13. The 1st Defendant led evidence and stated that the Plaintiff sold the suit land to the 4th Defendant who transferred it to him after obtaining Land Control Board consent. That he purchased the suit land in 2011 and occupies it since. He stated that he went to the Land Control Board meeting with the 4th Defendant. That it is the 4th Defendant that applied for the Land Control Board consent. He informed the Court that he has not obtained consent for the transfer of the suit land from the 4th Defendant to himself. That the agreement for sale dated the 4/8/2011 was between the Plaintiff and the 4th Defendant. Neither did he carry out any search on the land before being transferred to him. That he did not pay the Plaintiff for the suit land but instead he paid the monies into the account of the 4th Defendant who he expected to have paid the Plaintiff.

14. In addition, the witness informed the Court that after obtaining the Land Control Board consent he walked into the Lands office and picked a title in his name.

15. DW2 – Nancy Wangari Chege informed the Court that she had leased the suit land from the Plaintiff from 2009 to 2010 during which period the said Plaintiff was indeed ailing. That on the 4/8/2011 the Plaintiff sold the suit land to him vide an agreement for sale in which she paid Kshs 280,000/-. That by this time, they had obtained Land Control Board consent and the Plaintiff executed all the transfer documents in her favour. That later she re-transferred the suit land to her son, the 1st Defendant. That they attended the land board on the 25/8/2011 and obtained the consent.

16. On cross examination, the 4th Defendant stated that he did not know the Plaintiffs father nor when he died. She stated that the agreement of sale was drawn in the presence of the 1st Defendant and her husband. That she paid the full purchase price in cash.

17. DW3 – Alice Gisemba introduced herself as the Land Registrar, Murang'a Lands Office. She informed the Court that according to the green card in her custody the suit land is registered in the name of 1st Defendant on the 17/8/2011 and a title issued thereto. That there is a transfer dated the 17/8/2011 between Abiniel Wangenye Kimani and Robinson Kiano Wangenye was not executed by the Land Registrar. That there are no documents to support the transfer of the land from the Plaintiff to the 1st Defendant. The Land Registrar noted that any transfer of a deceased person's estate must be accompanied by letters of grant of administration. In this case none had been filed. She categorically stated that a title cannot be prepared without the transfer documents or such documents that act as authority to effect change of title.

18. Parties filed written submissions which I have read and considered.

19. The issues for determination are;

- a. Whether the Plaintiff has locus standi to file this suit.
- b. Whether the Plaintiff has proved fraud
- c. Whether the title should be cancelled and reverted to the Plaintiff.

- d. Whether the Plaintiff is entitled to the orders of injunction against the Defendants
- e. Whether the Plaintiff is entitled to the orders of mesne profits.
- f. Who meets the cost of the suit?

20. It is not in dispute that the suit land was registered in the name of Abiniel Wangenye Kimani on the 29/11/1993. It is also not in dispute that according to the green card adduced in evidence the suit land is a resultant subdivision of the original parcel No. LOC.10/KAHUTI/1556.

21. The Plaintiffs case is anchored on fraudulent transfer and registration of the title in the name of the 1st Defendant which he avers the 1st and 4th Defendants were parties. He contends that contrary to the green card, his father did not transfer the suit land to him and the transfer dated 17/8/2011 was not executed by his father who had died 15 years later in 1996. He denied ever applying for the Land Control Board vide application on record and undated. Again it is purported to have been executed by his father who had passed away by then. The consent to transfer the land dated the 28/10/2010 is also said to be a fraud for the same reasons. He informed the Court that his father subdivided his land LOC.10/KAHUTI/1556 into 5 portions and transferred the portions to his children with the exception of the suit land. This is because, he avers, he was hospitalized at the time and later his father died before transferring the land to him. He therefore denied the entry No 2 as being genuine. He however produced a consent dated the 21/12/93 relating to the transfer of the suit land from Abiniel Wangenye to the Plaintiff together with a receipt dated the 1/12/93 in respect to Land Control Board consents for parcels Nos 2963 – 2967.

22. It is to be noted that the Plaintiff did not present any death certificate to confirm the death of his father. This evidence was however not challenged by the Defendants.

23. Be that as it may be, it therefore follows that the transfer and registration of the suit land in the name of the Plaintiff was not supported by any transmission document as is the case in the event of the death of a title holder. It is to be noted that the Plaintiff did not adduce any letters of grant of administration in respect to the estate of his father.

24. It is trite that an estate of a deceased person cannot be dealt with unless with the authority of the Court through letters of grant of administration properly sought and obtained. Section 45 of the Succession Act provides that except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

25. Any person who contravenes the provisions of this section shall—

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

26. In the absence of letters of grant of administration, the Court finds that the Plaintiff is not clothed with locus to prosecute this case on behalf of the estate of his late father.

27. Having established that the Plaintiff does not have the locus standi to file this suit, the justice of this case is to strike out the Plaintiff with no orders as to costs.

28. I find no need to determine the remaining issues in the suit.

29. It is so ordered.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 27th DAY OF FEBRUARY 2020

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Plaintiff: Present in person

Ndegwa HB for Mwaura for the 1st Defendant

2nd & 3rd Defendants – Absent/N A

Ndegwa HB for Mwaura for the 4th Defendant

Irene and Njeri, Court Assistants