



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL SUIT NO. 640 OF 2006

SAMUEL MWANGI NGUUNI.....PLAINTIFF

VERSUS

THE DISTRICT LAND REGISTRAR.....1ST DEFENDANT

THE HON. ATTORNEY GENERAL.....2ND DEFENDANT

CONSOLIDATED WITH

HIGH COURT ELC CASE NO. 397 OF 2008

HARRIS KIBATHI THUO.....PLAINTIFF

VERSUS

THE DISTRICT LANDS REGISTRAR

THE HON. ATTORNEY GENERAL

SAMUEL MWANGI NGUUNI.....DEFENDANTS

JUDGMENT

The Plaintiff's case as pleaded in his **plaint dated 21st June 2006** is that he made intention to purchase a parcel of land (suit property) known as Thika Municipality Block 2/30 from the proclaimed seller one John Irungu Kariuki. Thereafter he conducted an official search and it was confirmed by the 1st Defendant that the leasehold was registered in the seller's name; that on the strength of that assurance, he paid the purchase price of Kshs. 150,000/-; that he subsequently obtained the certificate of transfer of lease and paid a further Kshs. 9,000/- for that purpose; that he was alarmed to find construction going on at the suit property and a third party claiming its ownership; that upon inquiry, the 1st Defendant conducted investigations and concluded that the Plaintiff's lease was forged and or fraudulent.

The Plaintiff claimed that due to this, he suffered damage for relying on the negligent misrepresentation of the 1st Defendant. Particulars of negligence are contained in paragraph 11 of the Plaintiff. He sought special as well as general damages, interest and costs of the suit.

The Defendants filed amended **defence dated 28th October 2010 pursuant to consent order dated 26th November 2009**. They denied the contents of the plaint.

In the alternative and without prejudice they pleaded that every action taken by the 1st Defendant with regard to the suit property was carried out in good faith without any irregularities and in accordance with the law. They averred that the suit property at all times belonged one Harris Thuo who was allocated the same in 1976 and a lease duly registered in his name.

Finally, the Defendants pleaded that the certificate of lease over the suit property held by the Plaintiff is null and void for having been obtained on the basis of a lease which was procured fraudulently and if the Kshs. 150,000/- was indeed paid, the same was negligent; consequently, the Plaintiff is the author of his own misfortune. Particulars of negligence are outlined in paragraph 4B.

In the **reply to defence dated 12th October 2006**, the Plaintiff joined issue with the Defendants upon their statement of defence. He further pleaded that the alleged investigation should have been made prior to or in the course of issuing the Plaintiff with a search certificate and processing the certificate of lease.

Before the matter could be heard, Counsel for the parties brought to the attention of the Court the fact that there was a file in the Environmental and Land Court with similar parties, involving the same subject matter only that in the ELC file, the Plaintiff's claim was for issuance of a title deed for the suit property. They therefore proposed consolidating of both suits.

On 16th March 2012, the parties in this suit filed a consent dated 16th March 2012. The consent was duly signed by all Advocates on record for the parties and was in the following terms –

“CONSENT

By consent of all parties, kindly record the following consent;

- i. ***The two cases/files be marked as formally consolidated***
- ii. ***The plaintiff's claim with respect to HCCC 640/2006 be restricted to a claim for damages and costs***
- iii. ***The plaintiff in ELC 397 /08 be awarded prayer (b) and (c) of the plaint dated 19th August, 2008***
- iv. ***The consolidated cases to proceed by way of written submissions.***
- v. ***The parties to file witness statements and respective submissions, with plaintiffs filing and serving the Hon. Attorney General within 14 days from the date of this consent, and the Attorney General to file his witness statements submissions within 21 days thereafter.”***

The Advocates for the parties agreed that the only outstanding issues in the consolidated suits were damages and costs as all other issues were settled. **Written submissions** filed on behalf of the Plaintiff with respect to **HCCC No. 640 of 2006** on 6th July 2015.

In his submissions, the Plaintiff reiterated the facts of the case and insisted that the Defendants had not put up a plausible defence as they did not dispute issuing a title document to him nor did they disprove of the fact that two titles to the suit property were issued due to the negligence of their officers at the Thika Land Registry. He averred that apart from the amount expended on purchasing the suit property, he has been involved in three litigations which revolve around the suit property.

He sought damages of Kshs. 600,000/- for legal costs and those incidental to prosecuting and defending the suits and Kshs. 159,000/- as the amount paid out to the ‘vendor’.

It is clear in the instant case that there was a double allocation of the suit property to two different individuals though the title passed on to the Plaintiff was forged and/or fraudulently obtained by the person who purported to pass ownership. This is not uncommon occurrences within the corridors of the

Lands Offices. The High Court has dealt with many such cases.

In the instant case, the Plaintiff took appropriate early steps towards obtaining a certificate of lease to the suit property. All these he did with the knowledge and consent of the land officials, employees of the Defendants. The person who 'sold' the suit property to him did not have the right to sell it yet the Defendants stood by and watched the Plaintiff become a victim of a fraudster.

Having found that the Plaintiff was deceived and swindled into purchasing the leasehold interest comprised in the suit property, due to the negligence and/or fraudulent complicity of the agents of the Defendants, he is entitled to the reliefs sought.

I will grant him the damages amounting to Kshs. 159,000/- being the amount paid out to the fraudster in the belief that he was acquiring a clean title. The Defendant did not dispute that amount. The Plaintiff has also claimed general damages. He is entitled to some general damages. He has been kept out of property he paid for, for these many years.

The Defendants' involvement in misrepresentation of facts about the ownership of the suit property was a grave violation of the Plaintiff's proprietary interest in the suit property. I will award him general damages of KShs 600,000/00 as requested. The general damages will carry interest at court rates from the date of delivery of this judgment.

The plaintiff shall have the costs of the suit.

Dated and delivered at Nairobi this 6th Day of November, 2015.

A.MBOGHOLI MSAGHA

JUDGE