



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

LAND CASE NO.176 OF 2013

RICHARD OINDO ODANGA.....PLAINTIFF

VERSUS

1. PLANTEX LIMITED

2. ATTORNEY GENERAL.....DEFENDANTS

FINAL JUDGMENT

1. By a plaint filed here on 05/7/2013 and dated 4/7/2013, the plaintiff – **RICHARD OINDO ODANGA** – sued the two defendants – **PLANTEX LIMITED** (1st defendant) and AG (2nd defendant), alleging that the two, without his concurrence, fraudulently caused his land parcel No. **KISUMU/KANYAWEGI/1447** to be registered in the name of 1st defendant thereby taking away the plaintiff's proprietary rights.

2. The plaintiff pleaded that he came to know about this fraudulent transaction sometimes in January 2013 when he went to the Lands office to collect his title deed.

3. The 1st defendant is said to have been fraudulent in causing the land parcel to be registered in its name; causing the name of the plaintiff to be removed from the land Register; misleading the 2nd defendant that the plaintiff had transferred the land to it; presenting forged documents to the Land's office for registration; circumventing the requirements of the Land Control Board; and colluding with fraudsters to deprive the plaintiff of the land.

4. The 2nd defendant is accused of causing the 1st defendant to be registered as the proprietor of the land; accepting forged documents to transfer the land; assisting the 1st defendant to circumvent the requirement of land Control Board; altering entries in the land Register without the consent of the plaintiff; refusing to rectify the register even after the plaintiff complained; and colluding with the 1st defendant to deprive the plaintiff of his proprietary rights.

5. The plaintiff wants the following orders:

- A declaration that the purported transfer and Registration of 1st defendant's name over land parcel **KISUMU/KANYAWEGI/1447** was fraudulent and illegal and a declaration that the plaintiff is the proper and rightful sole proprietor of the said parcel of land; and a title deed to be issued in his name

- An order of rectification of the register directing the District Land Registrar to rectify the Register in respect of the land parcel by cancelling the 1st defendant and replacing it with that of the plaintiff and then issue a title deed in the plaintiff's name.

- Costs of the suit.

6. It appears to this Court that this suit was withdrawn against 2nd defendant on 6/8/2013 and this followed a written notice to that effect filed on 5/8/2013 and dated the same.

7. It appears clear that the 1st defendant was served by counsel for the plaintiff on 16/7/2013. There is an affidavit of service to that effect filed on 5/8/2013.

8. The 1st defendant however didn't enter appearance and/or file defence. Because of this, interlocutory judgment was asked for and the same was entered on 5/8/2013.

9. The matter came for formal proof on 13/2/2014. The plaintiff reiterated more or less what his pleadings contain. But his evidence had other details too. For instance, he conducted various searches which showed that the land was in his name but a search by a relative in January 2013 showed the land was in the name of 1st defendant. An earlier search by one Jack Omollo had also shown the land to belong to 1st defendant. And it appears that the 1st defendant's name was inserted on 12/2/2005.

10. The plaintiff also availed a sale agreement showing that he bought the land from the original owner. The agreement was availed here as exhibit P1. I need to observe here that the agreement shows the plaintiff was buying 0.9 ha of the land and not the 3.5 ha that he now claims.

11. It appears clear that the plaintiff has been trying in vain to procure a title deed but the land's office has not given him one in spite of the official records showing him as the owner of the land. That is why he came to **COURT**.

12. This is an uncontroverted matter. It was shown to the Court, vide a search conducted on 11/3/2014, that the land is in the plaintiff's name. It is not clear therefore why the land's office should be reluctant to issue the plaintiff with a title deed.

13. As things stand now, there is nothing really standing in the way of the plaintiff's case. It would appear that shady things had been attempted to wrest ownership of the land from him but the outcome of the latest search shows that such things now belong in the past.

14. For the Court, the position taken is that the matter is uncontroverted and the plaintiff has shown on balance that the land belongs to him. The plaintiff is therefore granted the prayers spelt out in para 5 of this judgment which are the same prayers sought in the last paragraph of the plaint. Costs are also granted.

A.K. KANIARU – JUDGE

3/7/2014

3/7/2014

A.K. Kaniaru – Judge

Dioanga – C/C

No party – Present

Interpretation: English/Kiswahili

COURT: Judgment read and delivered in open **COURT**.

Right of Appeal – 30 days.

A.K. KANIARU - JUDGE

3/7/2014