



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENTAL & LAND DIVISION**  
**ELC NO. 1296 OF 2013**

**MARY RUGURU NJOROGE.....PLAINTIFF**

**-VERSUS-**

**JOHN SAMUEL GACHUMA MBUGUA**

**ZACHARIA MAINA**

**N. W. HOUSING COMPANY**

**THE NATIONAL LAND COMMISSION**

**THE HON. ATTORNEY GENERAL.....DEFENDANTS**

**RULING**

1. The Applicant/Plaintiff seeks rectification of the title to Land Reference No. 7340/34 Ol Donyo Sabuk. The title is registered as Grant No. I.R. 55295. It was registered on 8<sup>th</sup> April, 1992. The specific prayers sought in the Notice of Motion dated 14<sup>th</sup> October, 2014 read as follows:-

1. THAT the Registrar of Titles do cancel the title in respect of Land Reference No. 7340/34 Ol Donyo Sabuk (I.R. No. 55295) measuring 9.7 Hectares and have the same rectified and registered in the name of MARY RUGURU NJOROGE, the administrator of the Estate of NJOROGE WAINAINA in place of N. W. Housing Company.

Or in the alternative.

2. THAT the Registrar of Titles do cancel the title in respect of Land Reference No. 7340/34 Ol Donyo Sabuk (I.R. No. 55295) measuring 9.7 hectares and have the same rectified to read the name of NJOROGE WAINAINA in place of N. W. Housing Company.

3. THAT the costs of the application be provided for.

The application is stated to have been brought under sections 3(1), 13(2) (a) & (d) of the Environment and Land Court Act, 2011 as well as Sections 50 & 51 of the Land Act and Section 80(1) of the Land Registration Act besides the various provisions of both the Civil Procedure

Rules and Civil Procedure Act.

2. Counsel for the Plaintiff, Mr. Mugo argued the application before me on 30<sup>th</sup> October, 2014 in the absence of the Respondents. Counsel urged the court to allow the application on the basis that there was an obvious error in the registration as the transfer did not tally with the sale agreement. Counsel also referred the court to the Masaku Donyo Sabuk Land Control Board's minutes of 25<sup>th</sup> August, 1993 which approved the transfer of the suit property to Njoroge Wainaina. Counsel finally referred the court to annexure "MR5" which is a copy of the registration certificate of the business name of Njoroge Wainaina Housing Company.
3. I have considered the submissions made by counsel, I have also perused and considered the contents of the Affidavit of the Applicant. Foremost, the power to rectify any register or title is vested both in the court as well as the Registrar. Under Section 79 (1) (a) of the Land Registration Act, No. 3 of 2012 the Registrar has powers to rectify the land register in the event of an error or omission which does not materially affect the interest of any registered proprietor. In short, such rectifications must not vitiate the proprietorship apparent on the register. The rectification must not be to the extent that it amounts to a transfer or cancellation of ownership unless it was fraudulently obtained as outlined under Section 79(2). The registrar may also upon proof of change of the name or address of the proprietor occasion any rectification: **see Section 79(3) of the Land Registration Act.**
4. The court too has powers to order the rectification of the title or register in appropriate circumstances. The court will under Section 80(1) of the Land Registration Act order the cancellation or amendment of an entry or any registration when it is satisfied that the registration was obtained made or omitted by fraud or mistake. Registration under the said Section, in my view, refers to and includes a title or entry in the register or on the title itself. It is however upto the party seeking rectification to prove to the court's satisfaction that there has been fraud or a mistake in the registration. In my view, the mistake referred to under section 80(1) includes both a slip like a typographical error and a substantive mistake like the registration of a wrong or erroneous name. In short, the court wields powers equivalent to those donated by statute to the Registrar under Section 79 of the Land Registration Act. A party seeking rectification may therefore elect to attend before the Registrar or appear before the court and prompt the process of rectification of a title or a register. I hasten to add to that, in equity, the court also has powers to rectify in suitable circumstances any written instrument to conform with the agreement between the parties, where the instrument, by mistake, does not express the agreement and the mistake justifies the intervention of the court: see **Thomas Bates & Sons Ltd –v- Wyndham's (Lingerie) Ltd [1981] 1 WLR 505** and **Grand Metropolitan Plc –v- the William Hill Group Ltd [1997]1 BCLC 390.**
5. It is upto the party seeking rectification, whether under the relevant statutory provisions or the equitable principles to satisfy the court or the Registrar, for that matter, that their intervention is justified. The evidence must in my view be convincing. Even though the ordinary standard of proof on a balance of probabilities applies the evidence ought to be sufficient to overcome the inherent probability that what is sought to be rectified was what was intended all along.
6. The applicant opted to prompt the court rather than the Registrar. The rectification sought is stated to have been a mistake. It is the name of the proprietor sought to be rectified. Entry No. I.R. 55295/2 on the Grant registered on 8<sup>th</sup> April 1992 is what is sought to be rectified. The entry in question was made on 30<sup>th</sup> July, 2007. It read as follows "*Transfer to N. W. Housing Company for Kshs. 788,000/=*". It is evident that the reflected proprietor is neither a natural person nor a juridical entity. It is merely a business name under the Registration of Business Names Act (Cap 499) Laws of Kenya. Business names are not legal persons, business names are incapable to owning and holding both movable and immovable property or any kind of property for that matter. Behind the business name, if the veil is lifted, exist legal persons whether corporate entities or natural individuals. Such that where a firm or partnership purchases a property, it is not the firm name or partnership name (read business name) that owns the property but rather the partners or

the proprietors of the firm.

7. Counsel for the Applicant pointed out that the business name entered against the title was itself wrong. He stated it should have been “Njoroge Wainaina Housing Company” even if it was the business name to be registered. I agree that should have been the worst the Registrar could have done. The certified Certificate of Registration of Business name reveals that the business name was “Njoroge Wainaina Housing Company” that certificate was issued under Section 14 of the Registration of Business Names Act. Under Section 20 of the said statute, certified copies of the certificate are prima facie evidence of the records kept by the Registrar of Business names. It is evident that the proprietor of the business was Njoroge Wainaina at all material times. It is also evident from the supporting affidavit that the relevant local Land Control Board had approved and consented to the transfer of subject property to Njoroge Wainaina and not to N. W. Housing Company. I am satisfied that the transfer ought to have been registered in favour of Njoroge Wainaina then trading as Njoroge Wainaina Housing Company. The entry made on 30<sup>th</sup> July, 2007 was a mistake. It should be rectified even if it appears that it is a final order in this suit. The court notes however that there has been an extended lapse of time between that entry and when the application for rectification was made. So much could have happened in between, there could be other claims unknown to the court. This is so when one considers the effect of entry No. I.R. 55295/3.
8. I would in the circumstances conditionally allow the application and make the following orders:-
  - a. Entry No. I.R 55295/2 registered against the title for Land Reference No. 7340/34 be rectified to reflect the proprietor thereon shown as **“Njoroge Wainaina t/a Njoroge Wainaina Housing Company”** instead of N. W. Housing Company.
  - b. The Applicant Mary Ruguru Njoroge and the Applicant’s Counsel Joseph Mugo Kamau (Identity Card No. 6104265 and Legal Bar Number P105/2044/90) do both issue individual Deeds of indemnity to be lodged with Chief Land Registrar to indemnify the Government of the Republic of Kenya against and from any claims concerning and touching the same title No. I.R. 55295 which claims, if any, currently subsist or may arise by virtue of rectification made herein.
  - c. There be no order as to costs as the application was not contested.
9. Orders accordingly.

**Dated, signed and delivered at Nairobi this 6<sup>th</sup> day of November, 2014.**

**J. L. ONGUTO**

**JUDGE**

**In the presence of:-**

.....

for the Plaintiff/Applicant

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for the Defendant/Respondent