



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ENVIRONMENT & LAND COURT**  
**CIVIL SUIT NO. 524OF 2011**

**DAVID NJAU GITU**

**FRANCIS KAIMURI**

**ALFRED CHEGE GITU**

**GEOFFREY MBIRUA GITU**

(Suing as the administrators of the

Estate of the late **Simon Gitu Njau**.....**PLAINITTS'**

**VERSUS**

**LAND REGISTRAR, THIKA**.....**1<sup>ST</sup> DEFENDANT**

**MICHAEL WACHIRA MITHAMO**.....**2<sup>ND</sup> DEFENDANT**

**JUDGEMENT**

The Plaintiffs' herein **David Njau Gitu** , **Francis Kaimuri** , **Alfred Chege Gitu**, and **Geoffrey Mbirua Gitu** suing as the Administrators of the Estate of the late **Simon Gitu Njau** have sued the Defendants , **Land Registrar Thika**, and **Michael Wachira Mithamo** seeking for various Orders:-

- (a) That an order declaring the late **Simon Gitu Njau** as the Legal and legitimate owner of the parcel of land known as **Ruiru/Ruiru East Block 7/43**.
- (b) An order rectifying the land Register by cancelling the transfer of the parcel of land known as **Ruiru/Ruiru East Block 7/43** to the 2<sup>nd</sup> Defendant.
- (c) An order declaring the title deed issued to the 2<sup>nd</sup> Defendant as **null** and **void**.
- (d) A permanent injunction restraining the 2<sup>nd</sup> Defendant from alienating, disposing or otherwise dealing with the parcel of Land known as **Ruiru/RuiruEast Block 7/43**.
- (e) Cost of this suit with interest at court rates until payment in full.

In the Complaint, the Plaintiffs alleged that at all material times relevant to this suit, the late **Simon Gitu**

**Njau** was the legal and legitimate owner of the parcel of Land known as **Ruiru/Ruiru East Block 7/43** (herein after referred to as the suit property). It was further alleged that sometimes in the year 2006, the 2<sup>nd</sup> Defendant fraudulently caused the suit property to be transferred to him. The particulars of the fraud were stated in paragraph 5 of the Plaintiff. The Plaintiffs further averred that they brought to the attention of the 1<sup>st</sup> Defendant the instances of such fraud but 1<sup>st</sup> Defendant refused, neglected or declined to rectify the Land Register by cancelling the transfer of the suit property to the 2<sup>nd</sup> Defendant. That by virtue of 1<sup>st</sup> Defendants refusal, denial or negligence and the 2<sup>nd</sup> Defendant fraudulently and conversionary conduct, the estate of the **late Simon Gitu Njau** has suffered and continues to suffer loss, and damage of being denied their legal title and use of the suit property.

The 2<sup>nd</sup> Defendant did not Enter Appearance and Interlocutory Judgement was entered against him on 9<sup>th</sup> October, 2012. The Attorney General on behalf of the 1<sup>st</sup> Defendant did not file Defence. The suit is therefore unopposed.

On 17/6/2013, the parties herein (Counsel for Plaintiff and State Counsel for the 1<sup>st</sup> Defendant) entered Consent in court. By consent, the parties agreed as follows:-

(1) The Plaintiffs' Plaintiff dated 28/9/2011 be allowed in terms of prayers No. (a) & (b).

(ii) The Court was to address prayers No. (c) (d) and (e) .

(iii) The witness statements and bundle of documents were to be adopted by the Court without calling their maker.

(iv) Parties were to put in written submissions.

The above consent was adopted by the court. Consequently the court enters Judgement for the Plaintiffs' against the Defendants in terms of prayers No. (a) and (b) and Orders that:-

(a) Late **Simon Gitu Njau** is the Legal and Legitimate owner of the parcel of land known as **Ruiru/Ruiru East Block 7/43**.

(b) The Land Register be rectified cancelling the transfer of the parcel of land known as **Ruiru/Ruiru East Block 7/43** to the 2<sup>nd</sup> Defendant.

I will now endeavour to deal with prayers **No (c) (d) and (e)**.

The Plaintiffs have asked the Court to declare the title deed issued to 2<sup>nd</sup> Defendant as **null and void**. From the Documents attached to the Plaintiff, it is indeed evident that on 3/7/1998, Michael Wachira Mithamo was issued with title deed for **Ruiru/Ruiru/East Block 7/43**.

The 2<sup>nd</sup> Defendant did not enter appearance and interlocutory Judgement was entered against him. I have also seen a witness statement from one **Jackson Kamau Wanjau** a Registrar of Title who stated that the transaction **No.10** on the Green Card was a forgery and the said entry is illegal as it is based on fraud.

Section 26 of the Land Registration Act 2012 provides that a **title** to a property can be subjected to challenge in the instances of **fraud** or **misrepresentation** or where the **certificate has been acquired illegally, unprocedurally or through a corrupt scheme**.

In the instant suit, the Plaintiffs have alleged fraud which fraud has not been disputed by the proprietor- 2<sup>nd</sup> Defendant herein as he did not enter appearance nor file Defence. For these reasons, the court do declare that the title deed issued to the 2<sup>nd</sup> Defendant herein is null and void and proceeds to cancel it.

Having found that the Title Deed to 2<sup>nd</sup> Defendant is **null** and **void**, the Court proceeds to issue a Permanent Injunction as stated in prayer No. (d) of the Plaint. The 2<sup>nd</sup> Defendant is also condemned to pay costs.

The Court having considered the pleadings and the documents attached therein enters Judgement for the Plaintiffs' against the Defendants as stated in the Plaint.

It is so ordered.

Dated and delivered this 4<sup>th</sup> day of October, 2013.

**L.N. GACHERU**

**JUDGE**

**In the Presence of:-**

..... For the Plaintiffs

.....For the Defendant

Lukas: Court Clerk

**L.N. GACHERU**