



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
ENVIRONMENTAL & LAND CASE 261 OF 2009

LEAH WARUGURU KEGURO1ST PLAINTIFF

ZIPPORAH WANJIRU KEGURO.....2ND PLAINTIFF

- VERSUS -

JOSEPH KANURI MWAURA..... 1ST DEFENDANT

LAND REGISTRAR KIAMBU2ND DEFENDANT

JUDGMENT

1. The plaintiffs pray that title number Githunguri/Kanjai/1075 registered in the 1st defendant's name be cancelled. The plaintiffs claim that the two defendants conspired to fraudulently deprive the 1st plaintiff's late husband, one John Peter Keguro, of the land. They thus pray for an order to reinstate the deceased or his estate as the owner of the suit land.

2. The 1st plaintiff is the wife of the deceased. The 2nd plaintiff is her daughter. On 23rd July 1992, the deceased was registered as the sole proprietor of the land. It measures 1 acre or thereabouts. The deceased died on 20th January 1998. The plaintiffs' case is that the 1st defendant conspired with the Registrar, Kiambu Land Registry, the 2nd defendant, to transfer the land to the 1st defendant. The plaintiffs testified that this was evident from the consent to transfer dated 17th March 1998 and the transfer dated 20th February 1998. By those dates, the deceased had already passed on. The plaintiffs also testified that the transfer instruments allegedly executed by the deceased were forgeries.

3. I have seen the death certificate issued on 25th February 1998 (**exhibit 2**). I am satisfied the deceased died on 20th January 1998. The deceased was the registered owner of the suit land as evidenced by a copy of the green card or abstract of title (**exhibit 3**). The plaintiffs are the personal representatives of the estate of the deceased by virtue of a grant of letters of administration intestate issued by the High Court on 11th May 1998.

4. I have perused the transfer of title dated 20th February 1998 in favour of the 1st defendant (**exhibit 4**). The plaintiffs were both emphatic that the signature of the deceased is a forgery. It is not his familiar

or usual signature. The application for consent to transfer to the local land control board dated 20th February 1998 and the subsequent consent dated 17th March 1998 are challenged by the plaintiffs for the same reasons.

5. The 1st defendant had filed a defence dated 7th July 2009. He had pleaded that he bought the land from the deceased who was his step brother. He had alleged that the deceased had separated with the 1st plaintiff and remarried one Elizabeth Wanjiru who was privy to the sale. The plaintiffs denied those allegations in their sworn testimony in court. The defendants though served, did not appear at the trial. Accordingly, the evidence of the plaintiffs is unchallenged and uncontroverted. Even assuming that the defendant was telling the truth, I have found for a fact that at the time the 1st defendant sought consent to transfer or obtained the consent, the deceased was dead. The procedure of obtaining a consent under the then Land Control Act was thus breached and the ensuing letter of consent was fatally defective. The transfer instrument is dated 20th February 1998. By that date, the deceased had passed on. From the green card, I glean that the transfer was only registered or a new title issued on 2nd April 1998. Even in the statement of defence, the defendant does not plead on the dates or consideration for the alleged sale from the deceased to him. That is quite telling. The transfer to the 1st defendant registered by the 2nd defendant is replete with procedural flaws. The irregularity points strongly to a fraudulent transfer.

6. I am well alive to the cardinal precept of the law of evidence that he who alleges must prove it. See *Koinange and 13 others Vs Koinange* [1986] KLR 23. The standard of proof for fraud is very high approaching but below proof beyond reasonable doubt. See *Ratilal Gordhanbhai Patel Vs Lalji Makanji* [1957]

E A 314, *Urmila Mahindra Shah Vs Barclays Bank International and another* [1979] KLR 67. It requires proof beyond the usual standard of balance of probabilities in civil cases.

7. In the absence of a firm rebuttal and on the preponderance of the evidence before me, I find that the 1st defendant procured the transfer of land irregularly or fraudulently. The signature of the deceased is disputed. Application for consent and the consent of land control board were obtained after the death of the deceased. And so is the subsequent transfer to the 1st defendant. The actions of the 1st defendant amounted to intermeddling with the estate of the deceased. Having reached that conclusion, I find that the transfer registered on 2nd April 1998 in favour of the 1st defendant and the title deed issued on even date is null and void.

8. In the result, I enter judgment in favour of the plaintiffs against the defendants and decree as follows;

- a) **That** the transfer and title made in favour of the 1st defendant over Githunguri/Kanjai/1075 and entered on the register on 2nd April 1998 be and are hereby cancelled.
- b) **That** the 2nd defendant shall rectify or effect a retransfer of the land in favour of John Peter Keguro (now deceased) or to the estate of John Peter Keguro.
- c) **That** the plaintiffs are awarded costs of the suit to be paid by the 1st defendant in any event.

DATED and DELIVERED at NAIROBI this 10th day of July 2012.

G.K. KIMONDO
JUDGE

Judgment read in open court in the presence of

Leah Waruguru and Zipporah Wanjiru (in person) for the Plaintiffs.

No appearance for the 1st Defendant.

No appearance for the 2nd Defendant.

Mr. Collins Odhiambo Court Clerk.