



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 222 OF 2015

RUTH WANJIKU MUGO.....PLAINTIFF

VERSUS

MAGUTU KWAMBOKA LILIAN.....1ST DEFENDANT

CHARITY KERUBO OGERO.....2ND DEFENDANT

JUDGMENT

(Suit by plaintiff seeking cancellation of title of the defendants; plaintiff having held title to the land; defendants procuring registration of it; plaintiff asserting that she never sold the suit land to the defendants and never executed any transfer instruments; ID card used to transfer land not plaintiff's ID card; no defence filed by the defendants; apparent that transfer to the defendants was procured by way of fraud and/or misrepresentation; judgment entered for the plaintiff).

1. This suit was commenced through a plaint which was filed on 3 August 2015. In the plaint, the plaintiff has pleaded that she is the bona fide owner of the land parcel Mau Summit/Molo Block 3/1052 (the suit land) having acquired the title by virtue of her membership in Dagoretti Nyakinyua Cooperative Society Limited. She has averred that since being registered as proprietor she has always been in possession. In the month of April 2015, her attention was drawn to the existence of a case in the Molo Magistrate's Court being *Molo PMCC NO. 107 of 2015, Magutu Kwamboka Lilian & Charity Kerubo Ogero vs Geoffrey Mbure Mukono & Evanson Njoroge Mugo*, where the plaintiffs in that suit (and the defendants herein) claimed ownership of the suit land on the basis that they purchased it in January 2014. In the said suit, the plaintiffs (the defendants herein) had a title to the suit land issued on 30 January 2014, an official search for the suit land issued on 11 July 2014; a copy of an alleged sale agreement entered into between Magutu Kwamboka Lilian and the plaintiff herein; an alleged copy of title to the suit land in the plaintiff's name dated 8 April 1992; and a copy of an Identity Card alleged to be the plaintiff's bearing the serial number 2137870848. The plaintiff believes that these documents may have been used to effect transfer of the suit land to the defendants but it is her case that these are blatant forgeries and the transfer of the land to the defendants was through fraud, in that they forged the plaintiff's signature in the alleged sale agreement; forged a title to the suit land dated 8 April 1992; forged the plaintiff's signature on the application for Land Control Board consent; forged the plaintiff's signature on the transfer form; forged the plaintiff's ID card; forged the plaintiff's PIN Certificate; affixed fake photographs said to be of the plaintiff in the transfer instrument; procured through misrepresentation consent of the Land Control Board; procured their registration as proprietors of the suit land through fraud/misrepresentation and/or a corrupt scheme. The plaintiff has averred that she does not know the defendants; that she is still in possession of the original title deed; that she has never made an application to the Land Control Board to sanction the sale of the suit land; that she has never entered into an agreement for sale with the defendants and neither has she received any consideration for the land; and that she has not executed any transfer in favour of the defendants. In the suit, she has asked for orders for a declaration that the defendants effected transfer to their names and obtained title fraudulently/through misrepresentation or illegally/unprocedurally through a corrupt scheme; an order directing the cancellation of the defendant's title; and a permanent injunction to restrain the defendants from the suit land.

2. Despite being served, the defendants did not enter appearance and neither did they file any defence. They did not also attend at the hearing of the case although they were served with a hearing notice.

3. The plaintiff testified and availed her original title deed. She also produced the documents filed by the defendants in the case in Molo. She adopted her witness statement which basically repeated the averments in the plaint.

4. This case is undefended. It is the plaintiff's claim that the registration of the defendants was procured through fraud and/or misrepresentation and/or illegally through a corrupt scheme. The plaintiff has asserted that all the documents that the defendants used to procure transfer into their names were forged. She has pointed out that the ID card displayed by the defendants in their Molo case is also not her ID card. She has stated that the signatures in the documents used to transfer the land to the defendants are not her signatures. Neither did she appear before the land control board for consent. She only got to know that the defendants have title after they sued her son and caretaker in the Molo case who were the ones in possession of the suit land.

5. All the claims of the plaintiff have not been controverted by the defendants and on my part I have no reason to doubt the plaintiff. It is apparent to me that the defendants either forged documents by themselves or procured forged documents so as to transfer the suit land to themselves. In as much as the law is protective of title, title can be impeached if it was procured fraudulently or through misrepresentation to which the title holder is a party, or where the title has been procured illegally or through a corrupt scheme. This is the law as stipulated in Section 26 (1) of the Land Registration Act, Act No. 3 of 2012 which provides as follows :-

26. Certificate of title to be held as conclusive evidence of proprietorship

(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

6. The defendants could not have procured registration of the title into their names without being a party to the forged documents or at the very least misrepresenting that the plaintiff has sold the land to them. Their title was also acquired illegally and unprocedurally, for they could not have obtained title without a valid transfer by the plaintiff. Their title is a bad title and liable to be cancelled. I do not hesitate to cancel their title. I direct the Land Registrar Nakuru to proceed and cancel all entries in the register in favour of the defendants and have title revert back to the plaintiff. The title deed of the defendants is also declared to be an invalid title deed and is hereby nullified. I further declare that it is the plaintiff who is the rightful proprietor of the land parcel Mau Summit/ Molo Block 3/ 1052 (Dagoretti Nyakinyua). The defendants are hereby permanently restrained from entering, being upon, or in any other way interfere with the possession of the plaintiff over the suit land. The plaintiff shall have the costs of this case.

7. Judgment accordingly.

Dated, signed and delivered in open court at Nakuru this 12th day of March 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In Presence of :-

Mr. Biko holding brief for Mr. D.W. Karanja for the plaintiff.

No appearance for the defendants.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU