



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ELC APPEAL NO. E012 OF 2023

STEPHEN KARANJA MUNGAI
APPELLANT

VERSUS

**THE REGISTERED TRUSTEES WONDERFUL LIFE CENTRE
CHURCH**

**KIRATINA.....RESPOND
ENT**

***(Being an Appeal from the Judgment and consequential
orders of the Kiambu Law Court***

(The Hon. M. Kinyanjui) given at Kiambu on 23.1.2023)

JUDGMENT

1) The Appellant instituted this Appeal vide a Memorandum of Appeal dated 20/02/2023 against the trial Court Judgment delivered on 23/01/2023 in **Kiambu Civil Suit No. 351 of 2015**. The said Memorandum of Appeal contains fourteen (10) grounds of appeal as follows:

1. THAT the learned trial magistrate erred in law and fact in dismissing the Appellant's amended Defence and Counter claim without considering all the issues raised in the said amended Defence and Counterclaim.

2. THAT the Learned Magistrate erred in law and fact when he failed to see with compound eyes and acknowledge the anomalies in obtaining the land control board consent when the Appellant was not present at the land control board meeting at the time issues of subdivision of HIS land parcel No. Komothai/Kiratina/1279 were being discussed which is blatant contravention of the law
3. THAT the trial magistrate erred in law and in fact in assuming that since 9 persons were present as captured in the minutes of the Land Control Board for the meeting held on 16th July 2008, then their agenda to partition the Appellant's parcel of land ought to be upheld despite the Appellant's absence from the said meeting while he was the registered owner of the property being affected exhibiting irregularities and illegalities.
4. THAT the Learned Magistrate erred in law and fact by not observing that spousal consent was not obtained before subdividing and transferring land parcel No. Komothai/Kiratina/1279 in clear contravention of the law.
5. THAT the trial magistrate erred in law and in fact by assuming that the Appellant would not have allowed the Respondents to occupy land parcel No. Komothai/Kiratina/1911 hived from land parcel No.

Komothai/Kiratina/1279 while indeed vide the Memorandum of understanding dated 9th MARCH, 2001 the Appellant had allowed the Respondent to occupy and operate a Church on that parcel of land for 5 years without payment.

6. THAT the trial magistrate erred in law and in fact by not demanding for receipts or the ledger book kept by the Respondent to prove payment of the consideration to the Appellant in light of the termination of the agreement notice dated 3rd December, 2009.
7. THAT the learned trial magistrate erred in law and in fact in assuming that the Appellant's wife was not arrested and that the Appellant produced his original Title Deed to the OCS when in fact the learned magistrate had perused the proceedings in criminal case no. 2169 of 2013 and saw that PW1, PW2 and PW4 and the accused person himself affirmed that she indeed had been arrested and the original title deed to land parcel No. Komothai/Kiratina/1279 deposited with the OCS Kibicho Police Station as a condition for her release.
8. THAT the trial magistrate erred in law and in fact in concluding that the accused person in CR2169 of 2013 was acquitted as the Court did not find that he accused therein obtained registration of title deed by fraud whereas the Court acquitted him on grounds that he

could not have committed the crime alone and others were shield from being charged.

9. THAT the trial magistrate erred in law and in fact by assuming that since no expert witness was called to prove that the Appellant's signature was forged, then automatically it was not, whereas on the face of it, the Appellant's signature as it appears in the memorandum of understanding is different from the one that appears in the sale agreement and the transfer forms.
10. THAT the learned trial magistrate was erred in fact and in law by arriving at the decision without due consideration of the law and the totality of the facts before the Court.

REASONS WHEREFORE the Appellant prays for the following orders:

- a) The Appeal be allowed.
- b) The Judgment of the Lower Court delivered on the 23rd day of January 2023 be set aside.
- c) This Court does reassess the facts and evidence on record.
- d) The Judgment of the lower Court be set aside and be substituted with a finding that Title deed to land parcel No. Komothai/Kiratina/1910 and Komothai/Kiratina/1911 be amalgamated and revert back to the original land parcel No. Komothai/Kiratina/1279; and be registered in the name of the Appellant.

- e) The Appellant be awarded costs.
- 2) The Appeal was canvassed by way of written submissions.
 - 3) The gist of the Appellant's case according to his Amended Statement of Defence dated 08/09/2017 is that the Plaintiffs/Respondents are registered as the owners of LR Komothai/Kiratina/1911 but he contends that they are so registered through fraudulent and false misrepresentation as no purchase price was ever paid to the Defendant.
 - 4) It was the Appellant's defence in the trial Court that the Agreement for Sale dated 22/06/2005 was drawn between the Plaintiffs and the Defendant over the purchase of the said parcel of land but that the Plaintiffs cunningly deceived the Defendant into signing the agreement and that they did not pay the purchase price at all.
 - 5) According to the Defendant/Appellant, he never attended any Land Control Board meeting neither did he sign any transfer or mutation form to facilitate the sub-division and transfer of the subject property into the name of the Plaintiffs. So, he avers that all transactions undertaken were done through illegality and fraudulent means and through false misrepresentation.
 - 6) At the trial the Defendant held the position that he had each and every right to defend his interest and right of ownership to his property.
 - 7) He listed the particulars of fraud and false misrepresentation by the Plaintiffs as:

- i. Cunningly deceiving the Defendant into signing the agreement before payment of the purchase price.
 - ii. Forging the Defendant's signature in the transfer form.
 - iii. Falsely attending the Land Control Board without the Defendant's knowledge or consent.
 - iv. Procuring a letter of consent from Githunguri Land Control Board through false pretenses.
 - v. Causing the subject property to be registered in their names through illegal and fraudulent means.
- 8) The Appellant also in his statement averred that the restriction that was lodged by the DCIO Kiambu was lawful and legal since he did so upon finding that there was a probable cause and justification to defend the Defendant's interest.
- 9) The Appellant avers in his Counter-claim that it is not disputed that the Defendant and the Plaintiff entered into a Sale Agreement for the sale of a portion of land to be excised from land parcel No. Komothai/Kiratina/1279. However, he contends that the Plaintiffs did not pay him since they said they shall pay him after obtaining Land Control Board Consent. Although he denies attending any Land Control Board meeting either for subdivision or transfer and neither did he sign any Land Control Board Consent and/or transfer document.

- 10) At the same time, he denies having given his PIN or copy of ID to the Plaintiff or any Advocate. That in fact **Albert O Seneti T/A Seneti & Co. Advocates** only saw him sign but did not witness the purchasers give him the money.
- 11) Further that the Defendant's spouse did not give any consent this being matrimonial property. Further that the Defendant leased his parcel of land to the Plaintiffs and never had any intention to sell the same. That the extension of lease that the Plaintiffs tricked him to sign before their Advocate is what the Defendant later realized the Plaintiffs took as intention of selling a portion of his matrimonial home.
- 12) That the consent the Plaintiffs are relying on was obtained four (4) years after the Sale Agreement yet Section 6 places the consent period at six months and so if at all there is consent it is null and void. Even so he avers that consent forms bearing his signature and spousal consent provided by his wife are all a forgery.
- 13) As a result, he prays that the Counter claim should be allowed as follows:
- i. The title deed registration No. Komothai/Kiratina/1910 and Komothai/Kiratina/1911 be amalgamated and to revert back to the original land parcel No. Komothai/Kiratina/1279.

- ii. The Defendant be the registered owner of land parcel No. Komothai/Kiratina/1279.
 - iii. The Plaintiffs' suit be dismissed with costs to the Defendant
 - iv. The Defendant be compensated for economical loss for land parcel No. Komothai/Kiratina/1911.
- 14) The Defendant/Appellant also lodged a complaint with DCI Kiambu which led to the arrest of James Ndirangu Ngang'a and he was charged in **Criminal Case No. 2168 of 2013 - Republic vs James Ndirangu Ng'ang'a** with an offence of obtaining registration fraudulently contrary to Section 313 of the Penal Code. The accused was acquitted by the Court vide the Judgment read by Hon J. Kituku PM.
- 15) The suit in the lower Court had been instituted by the Plaintiffs/Respondents who had filed a Plaint dated 22/12/2015 and lay claim to the suit property LR Komothai/Kiratina 1911 which they stated that they bought from the Defendant.
- 16) However, they stated in their Plaint that despite having bought the said portion of the suit property the Defendant/Appellant and or his agents and servants have been disturbing the Plaintiff interfering with their full enjoyment of the parcel thereby interfering the Plaintiffs' absolute proprietary rights. They listed particulars of disturbance which included abusing the worshippers, denying worshippers access to the Church by locking the

gate, burning refuse next to the Church and trespassing on LR Komothai/Kiratina 1911.

- 17) The Plaintiffs also claimed that the Defendant/Appellant on 27/10/2010 and 19/11/2010 caused for no apparent reason or justifiable cause a restriction to be placed by the DCIO Kiambu on LR Komothai/Kiratina 1911, which they refused to remove despite demand made.
- 18) They Plaintiffs therefore prayed for Judgment against the Defendant and sought for:
 - a) Declaration that LR Komothai/Kiratina 1911 belongs to the Plaintiff absolutely.
 - b) Removal of the Restriction, placed against LR Komothai/Kiratina 1911.
 - c) An order stopping the Defendant, his agents and or servants from interfering with the Plaintiff's rights and enjoyments of LR Komothai/Kiratina 1911.
 - d) Cost of the suit.
- 19) Upon hearing the suit, the Learned trial Magistrate held that the Plaintiffs/Respondents had proved their case on a balance of probabilities and granted all the orders sought through the Judgment dated 23/01/2023 and costs were awarded to the Plaintiffs.
- 20) Aggrieved by the said decision, the Appellant filed this Appeal and cited the grounds enumerated in para 1 of this Judgment. The Appellant through the firm of **Njihia & Associates** filed submissions dated 01/7/2024. He rehashed

the case before the trial Court and averred that the Appellant never appeared before the Land Control Board (LCB) to give his consent for the transfer.

- 21) Be as it may he also contended that the consent from the documentation was obtained three years after the agreement was executed.
- 22) The Appellant rightly cited Section 8 of Cap 302 of the Land Control Act which lays emphasis on the issue of obtaining consent from the LCB within six (6) months.
- 23) Reliance was placed on the cases **Mbogo & Another vs Shah [1968]EA, p.15** and **Kenya National Highway Authority - vs- Shalien Masood Mughal & 5 Others [2017] eKLR.**
- 24) The Appellant further averred that there could not be a valid transfer from the Appellant without spousal consent as envisioned under Section 12 (1) of Matrimonial Property Act. Hence the Respondents cannot claim to be innocent purchasers for value since their alleged title was tainted with irregularities.
- 25) Last but not least, the Appellant impugned the trial Court's finding for ignoring the issues of legality, regularity and procedure in the transfers of the suit property. He urged the Court to allow his Appeal and grant his prayers.
- 26) On the other hand, the Respondent's submissions dated 11/9/2024 were filed by **Mburu Machua and Company**

Advocates. Supporting the trial Court's Judgment, the Respondent invited this Court to determine three issues;

- i. Whether the Learned Magistrate erred in law and fact when he failed to see the anomalies in obtaining the Land Control Board Consent when the Appellant was not present at the Land Control Board Meeting at the time issues of subdivision of his parcel No. Komothai/Kiratina/1279 were being discussed;**
- ii. Whether the Learned Magistrate erred in law and fact by not observing that spousal consent was not obtained before subdividing and transferring land parcel Komothai/Kiratina/1279 in clear contravention of the law; and**
- iii. Whether the Learned Magistrate erred in law and in fact in assuming that the Appellant would not have allowed the Respondent to occupy land Parcel No. Komothai/Kiratina/1911 hived from the land Parcel no. Komothai/Kiratina/1279 while indeed vide the Memorandum of Understanding dated 9th March 2001 the Appellant had**

allowed the Respondent to occupy and operate a Church on that parcel of land for 5 years without payment.

- iv. Whether the trial Magistrate erred in law and in fact by not demanding for receipts of the ledger book kept by the Respondent to prove payment of the consideration to the Appellant in light of the termination of the agreement notice dated 3rd December, 2009.**
- v. Whether the trial Magistrate erred in law and in fact in concluding that the accused person in CR 2169 of 2013 was acquitted as the Court did not find that the accused therein obtained registration of title deed by fraud whereas the Court acquitted him on grounds that he could not have committed the crime alone and others were shielded from being charged.**
- vi. Whether the trial Magistrate erred in law and in fact by assuming that since no expert witness was called to prove that the Appellant's signature was forged, then automatically it was not, whereas on**

the face of it the Appellant's signature as appears in the Memorandum of Understanding is different from the one that appears in the sale agreement and transfer forms.

- 27) The Respondent submitted that the Appellant failed to prove his allegation against the Respondent as required under Section 107 of the Evidence Act. That there was no evidence to demonstrate that he did not appear before the LCB and also that he has never brought any action against the LCB concerning instructions to effect the alleged transfer. Secondly, that allegations on fraud must be strictly pleaded and proven.
- 28) That the Appellant did not prove the allegations of forgery in the impugned transfer documents with regard to his signature. Lastly, that the evidential burden shifted to the Respondent when he averred that he never gave his title deed to allow for the subdivision he was to prove that the mutation and resultant subdivisions were done against his will.
- 29) Notably also the burden of proof shifted to the Appellant to prove that the Respondents stayed on the suit property for five (5) years but paid nothing.
- 30) Reliance was placed on the cases of **Evans Otieno Nyakwana v Cleophas Bwana Ongaro [2015]eKLR.**

31) The Respondents urged the Court to dismiss the Appeal with costs.

Analysis & Determination

32) I noted an anomaly in the trial Court case and so I will not go to the merits of this Appeal.

33) The Plaintiff in the lower Court who brought this suit to Court is described as Registered Trustees Wonderful Life Centre Church Kiratina. Notably, in perusing the Court lower Court file I saw that the said Church is registered under the Societies Rules, 1968 as Wonderful Life Church on 23/07/2010. Meaning that this is a Church and the rules governing law suits to Societies do apply.

34) A Church registered under the Kenyan Societies Act is not considered a body corporate with an independent legal personality and therefore cannot sue in its own name. It must sue in the name of its registered officials or Trustees.

35) The suit should not have been instituted in the general name of the Trustees but specific names and then they should have indicated that they are suing for and on behalf of Wonderful Life Centre Church Kiratina since Registered Trustees in general as a title does point to legal persons themselves.

36) As a matter of fact, if the Church has Registered Trustees under the **Trustees (Perpetual Succession) Act**, these Trustees are generally authorized to bring or defend

legal proceedings in their own names with respect to the Society's property, rights or claims.

- 37) At the same time, under Order 1 Rule 8 of the Civil Procedure Rules, one or more members can sue in a representative capacity on behalf of all the other members, provided they have the same interest in the suit.
- 38) From my reading of the pleadings, the suit was wrongly instituted and in fact the legal entity known as Registered Trustees is not recognized in law and therefore the Learned Magistrate had no competent suit before him and what he rendered is a nullity. The suit should have been struck out at the lower Court. This fundamental legal error, goes to the core of this Court's jurisdiction and the validity of the entire legal action is null and void ***ab initio***.
- 39) Now, when an Appellate Court like in the instant circumstances discovers that the original suit was instituted by a non-existent entity, I am obligated to typically declare the initial suit a ***nullity ab initio*** and this being the case I do strike out the Appeal.
- 40) A non-existent person or entity, in the eyes of the law, is merely a name with no legal existence and therefore lacks the *locus standi* (legal standing) to sue or be sued.
- 41) The original suit is considered "dead on filing" and void, meaning it cannot be resuscitated by amendments or substitutions. Since there was no valid suit in the lower

Court, there is no competent case to form the basis of an Appeal.

Disposal Orders

42) Given the foregoing the Appeal is struck out for want of form and for lack of there having been a competent suit before the trial Court.

43) Since it is the non-existent legal Plaintiff/Respondents who brought the non-existent suit, I direct that they pay the Appellant/Defendant costs of this whole process in lower Court and in Appeal Court.

44) Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 19TH DAY OF JANUARY, 2026 VIA MICROSOFT TEAMS.

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**MOGENI J
JUDGE**

In the presence of:

Mr. Kololo holding brief for Ms. Njehia for the Appellant
Respondent - Absent

Mr. Melita - Court Assistant

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**MOGENI J
JUDGE**