



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT (LAND DIVISION)
AT MILIMANI LAW COURTS, NAIROBI
ELCLC CASE NO E095 OF 2024

MAINA NDEGWA.....1ST

PLAINTIFF

ALICE NJOKI MAINA.....2ND

PLAINTIFF

VERSUS

VINCENT MBWABI LIGUYANI.....

DEFENDANT

JUDGEMENT

Introduction

1. This matter is in relation to property known as LR 7785/802(Original no 7785/1/64) located in Runda Nairobi
2. The plaintiffs aver that they are the legally registered owners of the suit property having purchased the same in the year 2004 and enjoyed quiet possession of the same until the year 2020 when they visited the property and found trespassers on the property and, they reported to the police station and had them charged under criminal case Kiambu CR 740/2020.
3. They averred that on further enquiry they came to realize that the defendant had a fraudulent title registered in his name despite the

official records at the land registry indicating the plaintiffs to be the legally registered owners.

4. That on that discovery they lodged a complaint at the lands office and the defendant was summoned to appear and defend his title but failed to honour the said summons which meeting led to the decision that the plaintiff were the registered owners of the suit property and the title in the name of the defendant was cancelled and expunged from the records.
5. The plaintiffs have pleaded that the title by the defendant was obtained illegally and fraudulently hence the filing of this suit via the plaint dated 1st March 2024 where they sought for the following orders
 - a. A declaration that the plaintiffs are the only bonafide registered owners of all that property known as Land Ref no 7785/802(Original no 7785/1/64) located in Runda Nairobi
 - b. An order directing the defendant, his agents, servants or any other person occupying the property without the plaintiff's authority to forthwith vacate, and in default an order of eviction do issue against the defendant and all other such persons to be executed by OCS Runda police station
 - c. An order of permanent injunction prohibiting the defendant, his servants, agents or any other person from claiming, encroaching, trespassing or in any manner interfering with the plaintiff's ownership, occupation and use of the suit property

- d. Costs of the suit
 - e. Any other reliefs the honourable court may deem fit
6. The defendant was duly served as evidenced by the affidavit for service of one Richard Adere sworn on the 2nd April 2025 indicating that the defendant had been served by way of substituted service.
7. The Matter proceeded for hearing on the 2nd October 2025 where the 1st plaintiff appeared as PW1 and gave his evidence relied on his sworn witness statement dated 1st March 2024 and list of documents. He reiterated the fact that he bought the suit property in 2006 and had it registered in the plaintiffs' name and never sold or transferred it to anyone. That the actions of the defendant to obtain title are fraudulent as he has no rights over the property hence the orders prayed

Analysis and Determination

8. Having looked at the pleadings filed by the plaintiff, and on consideration of the submissions filed as well, the defendant having not entered appearance nor put in a defense, I come to the conclusion that the determination of the instant suit turns on only one issue for determination and that whether the plaintiff is entitled to the orders as prayed for in the plaint.

In the case of ***Daniel Kenga Katana & 4 others v Dzitu Toto Bokole & 3 others [2022] eKLR*** which addressed the issue of uncontroverted evidence. The learned judge in coming up with his judgment stated; *"The issue that the court has to deal with is whether the Plaintiff discharged the burden of proof. The Plaintiff*

gave evidence to proof ownership of the suit land by adducing oral and documentary evidence which was uncontroverted. It is trite that uncontroverted evidence is weighty and courts will rely on it to prove facts in dispute. The evidence cannot be controverted by allegations in the statement of defence if the defendants fail to call a witness to adduce evidence and be cross-examined to test the evidence.” He further went to quote was said by **Justice Mwongo in Peter Ngigi & Another** (suing as legal representative of the Estate **of Joan Wambui Ngigi) -v-Thomas Ondiki Oduor & Another 2019 eKLR** where he stated *“The general position running through such authorities is that uncontroverted evidence bears a lot of weight and a statement of defence without any evidence to support the assertions therein will amount to mere statements”*. He went ahead to dismiss the appeal based on the fact that the defendant never participated in the hearing process neither did he adduce any evidence alluding to the fact that he was not keen in defending the claim. The same reasoning can be applied by this honourable court since the defendant was of no show in the hearing process neither did, he put in any response to the pleadings.

9. The plaintiffs produced documentary evidence as in their list of documents. The plaintiff testified as PW1 and adduced a Copy of Sale Agreement dated 4/09/2006. This agreement is between Peter Ngugi Chege (Vendor)and Maina Ndegwa.It is not in dispute that the plaintiff is the purchaser in the agreement. The agreement identifies

the suit properties herein, has a consideration and is signed by both parties. Also adduced was a Copy of the transfer document in favour of the plaintiffs, a copy of the stamp duty receipt paid over the said transfer, A copy of title deed over the suit property in the plaintiff's name. The plaintiff has also attached a letter from the ministry of lands confirming and attributing ownership of the suit property to the plaintiffs and another letter cancelling the title deed that has been registered in the defendant's name .All these documents in my view set out the history of how the plaintiffs acquired title to the suit and the mere fact that the title deed is registered in the plaintiffs 'names , which title has not been challenged ,then is evidence enough on the ownership of the suit property.

It has been established that a certificate of title is held to be prima facie evidence of ownership of the stated land. This is provided for in Section 26(1) of the Land Registration Act which provides; -

“The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer ... 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 ... 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.”

10. I hold the view that the Plaintiffs' have established that their title is legitimate. They are therefore entitled to a declaration in that respect as well as vacant possession of the suit property and injunctive orders restraining interference with the property.

Conclusion

11. The upshot of the following is that the Plaintiffs have established their case on a balance of probabilities and are entitled to the orders sought as in the plaint that is

- a) A declaration that the plaintiffs are the bona fide owners of LR 7785/802(Original no 7785/1/64) located in Runda Nairobi
- b) An order of permanent injunction prohibiting the defendant, his servants, agents or any other person from claiming, encroaching, trespassing or in any manner interfering with the plaintiff's ownership, occupation and use of the suit property
- c) An order directing the defendant to vacate the suit property and in default an order of eviction within 90 days is hereby issued..
- d) The defendant to bear the costs of the suit

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **29th day** of **January 2026.**

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Mr. Oonge..... for the Plaintiff

No appearance for the Respondent

Philomena W Court Assistant

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