



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KERUGOYA**

**ELC CASE NO. 123 OF 2017**

ESTHER WAMUTIRA KARIMI.....1<sup>ST</sup> PLAINTIFF

ANN KARUARA KARIMI.....2<sup>ND</sup> PLAINTIFF

PERIS NYAGUTHII KARIMI.....3<sup>RD</sup> PLAINTIFF

MARY WANGARI KARIMI.....4<sup>TH</sup> PLAINTIFF

ELIZABETH WAINOI KARIMI.....5<sup>TH</sup> PLAINTIFF

JANE NJERI MUNENE.....6<sup>TH</sup> PLAINTIFF

**VERSUS**

LUCY KARIMI MIANO.....1<sup>ST</sup> DEFENDANT

JOSEPH WANJOHI KARIMI.....2<sup>ND</sup> DEFENDANT

JOHN MURIITHI KARIMI.....3<sup>RD</sup> DEFENDANT

SIMON MUNENE KARIMI.....4<sup>TH</sup> DEFENDANT

PETER MWANGI KARIMI.....5<sup>TH</sup> DEFENDANT

**JUDGMENT**

By a plaint dated 17<sup>th</sup> August 2017, the plaintiffs sought the following orders:

***(i) An order for cancellation of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants names from the Register for land parcel Number MUTIRA/KAGUYU/314 and the land to revert to the name of Stanley Karimi Miano so that a proper succession procedure can be undertaken.***

***(ii) Costs of the suit.***

In a joint statement of defence filed on 22<sup>nd</sup> September 2017, the defendants denied the plaintiffs claim and all particulars of fraud and sought to have the suit dismissed with costs.

**PLAINTIFFS' CASE**

The 2<sup>nd</sup> plaintiff testified on behalf of the other plaintiffs and stated that her co-plaintiffs are her sisters while the 1<sup>st</sup> defendant is their biological mother while the rest of the defendants are her siblings. She stated that the subject of this suit land Reference Number MUTIRA/KAGUYU/5314 is an ancestral land which belonged to their father Stanley Karani Miano (deceased). She stated that the land is a clan land which was inherited by their father from their grandfather. Their late father got registered as proprietor of the suit property on 27<sup>th</sup> September 2013 and on 12<sup>th</sup> October 2013, he passed on. On 22<sup>nd</sup> October 2013, she was buried. She stated that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup>

defendants through an unknown procedure illegally caused land parcel No. MUTIRA/KAGUYU/5314 to be registered in their names jointly alleging that the suit land was given to them by their father as a gift. The plaintiffs contend that their late father was not in a position of executing any document neither was he in a position to attend any Land Control Board for consent due to his ill health which led to his death. They stated that the suit property parcel No. MUTIRA/KAGUYU/5414 is a family land and ought to be shared equally among the members of the family of their late father. They further stated that they all live on another family land parcel No. MUTIRA/KAGUYU/319 which is registered in their father's name save for one of their brother namely Joseph Wanjohi who has since moved to the suit property. The witness produced a death certificate for his late father No. 0114775, a limited grant ad colligenda bona issued to Lucy Karimi Miano, a green card for land parcel No. MUTIRA/KAGUYU/5314 and a search certificate for land parcel No. MUTIRA/KAGUYU/319 as exhibits. The witness also alleged that her brothers who are also defendants in this suit did not file any succession cause to the Estate of their late father and that they did not obtain title to the suit property legally and procedurally and that they forged documents in order to get the title deed. She sought to have the title deed issued in favour of his brother cancelled and the same revert back to their late father's name so that they can carry out succession in respect of his Estate.

#### DEFENDANTS' CASE

The defendants did not attend Court during the hearing of this case despite the hearing date having been taken by consent of the parties. The lawyer for the defendants did not also attend Court. The case was allowed to proceed ex-parte.

#### ANALYSIS AND DECISION

The claim by the plaintiffs is for cancellation of the title deed issued to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants on 17<sup>th</sup> October 2013. The plaintiffs in their plaint dated 17<sup>th</sup> August 2017 set out particulars of fraud as grounds for cancellation of the title deed issued to them. Those allegations were followed up by the 2<sup>nd</sup> plaintiff during her testimony which was not controverted. The defendants who were served through their advocate failed to attend Court. As such, the evidence given by the 2<sup>nd</sup> plaintiff on behalf of the other plaintiffs remains unchallenged. The death certificate produced as Plaintiffs exhibit No. 1 indicates that the plaintiffs' late father died of severe pneumonia/sepsis/psychlayric patient on 12/10/2013. The green card which was also produced as Plaintiffs exhibit No. 3 indicates that the deceased was registered as proprietor on 27/9/2013 hardly one month prior to his demise. On 17/10/2013 which is also almost three (3) weeks later, the land was registered in the names of the defendants. The speed at which the registration and transfer was done raises more questions than answers. I agree with the plaintiffs' evidence that the defendants did not obtain the title to the suit property legally and procedurally. The position that a title that has been obtained fraudulently cannot be allowed to stand has been affirmed in a number of other cases. In the case of ***Elijah Makeri Nyangwara Vs Stephen Mungai Njuguna & another ELC Case No. 609 B of 2012 (Eldoret) Justice Sila Munyao*** (as he then was) held as follows:

***“It need to be appreciated that for Section 26 (1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, un-procedurally, or through a corrupt scheme. The heavy import of Section 26 (1) (b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, un-procedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of Section 26 (1) (b) in my view is to protect the real title holders from being deprived of their titles by subsequent transactions”.***

I agree with the decision of the learned Judge. I have no doubt in my mind that so far as the title of the defendants issued on 17/10/2013 is concerned, the same was procured by fraud, un-procedurally and misrepresentation as the original owner who by then was suffering from ill health would not have been in a position to execute the statutory documents. Having considered the testimony of the plaintiffs and the documents produced in evidence, I do not see how the title of the defendants can be allowed to stand. I am satisfied that the plaintiffs have proved their case on the required standard and do hereby enter judgment for the plaintiffs against the defendants as follows:

***(1) The title of the defendants Joseph Wanjohi Karimi, John Muriithi Karimi, Simon Munene Karimi and Peter Mwangi Karimi issued on 17/10/2013 in respect of land parcel No. MUTIRA/KAGUYU/5314 was improperly procured and the same is hereby cancelled.***

***(2) That the register of the land parcel No. MUTIRA/KAGUYU/5314 be rectified so as to remove the entries in favour of Joseph Wanjohi Karimi, John Muriithi Karimi, Simon Munene Karimi and Peter Mwangi Karimi and the title to revert back to the proprietorship of Stanley Karimi Miano.***

***(3) The defendants shall pay the costs of this suit jointly and severally.***

**READ, DELIVERED and SIGNED in open Court at Kerugoya this 20<sup>th</sup> day of September, 2019.**

**E.C. CHERONO**

**ELC JUDGE**

**20<sup>TH</sup> SEPTEMBER, 2019**

*In the presence of:*

*1. Mr. Maina Kagio holding brief for Ms Makworo for Plaintiffs*

2. *Defendants/Advocate – absent*

3. *Mbogo – Court clerk – present*