



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 358 OF 2013

JOHN NYAGAH KAMAU.....PLAINTIFF

=VERSUS=

STEPHEN ONYINO MKOBE.....1ST DEFENDANT

COMMISSIONER OF LANDS2ND DEFENDANT

JUDGEMENT

1. The plaintiff has filed this suit against the defendants seeking:-

(1) That the defendants/respondents by themselves, their servants and or agents constructing, selling, disposing, charging, transferring or in any other manner alienating the property known as Plot No. 257 (New Survey No. 944) now known as Nairobi/Block 157/944 which was a subdivision of the parcel of land originally known as LR 11379/3/R.

(2) A declaration that the parcel of land known as Plot No. 257 (New Survey No. 944) now known as Nairobi/Block 157/944 which was a subdivision of the parcel of land originally known as LR 11379/3/R rightfully belongs to the plaintiff and that any purported sale of the same is unlawful and consequently an order do issue directing the 2nd defendant to cancel the title issued in favour of the first defendant and to issue the same in the plaintiff's name.

(3) Costs of the suit and any other relief that the HOnourable court may deem just to grant.

2. Upon being served with copies of plaint and summons to enter appearance, the 1st and 2nd defendants neglected and/or refused to enter appearance and/or file a defence within the stipulated period. Interlocutory judgment was then entered against them and the matter fixed for formal proof.

3. PW1, James Nyagah Kamau told the court that he bought the suit property from Mr. Mwangi Waweru. That in 2011, his house was broken into and documents stolen. He made a report at Kayole Police Station. He was given a police abstract. He was able to get copies of the stolen documents. In 2013, he was pursuing the process of title from Kiambu Dandora Farmers Company when he was informed that someone was claiming he had sold the plot to him.

4. He told the court that he never sold the plot to anyone and that any transfer in favour of the 1st defendant was fraudulent. He did not receive any money from the 1st defendant. He relied on the witness statement and the list of documents as part of his evidence. He prays that the 1st defendant be restrained from interfering with the suit property.

5. PW2 Joseph Mwangi Karanja, a secretary to Kiambu Dandora Farmers Company Limited confirmed that the plaintiff bought the suit property from the original allottee, Raymond Mwangi Waweru. The said Raymond Mwangi Waweru was a shareholder. He further told the court that the transaction was brought to the attention of the company and it was approved. He also confirmed that the plaintiff never sold the suit property to the 1st defendant. Further that the plaintiff reported to them the loss of documents and he was supplied with copies of the said documents. He confirmed the plot belongs to the plaintiff.

6. The plaintiff's case has not been controverted. In support of his case the plaintiff relied on the list of documents filed in court. I find that the plaintiff has established that he is the owner of the suit property. That he never sold it to the 1st defendant and the transfer to the 1st defendant was fraudulent.

7. It is the plaintiff's case that the 1st defendant being an officer with the 2nd defendant may have taken advantage of his position and had the suit property transferred in his name. PW2 has confirmed that the suit property belongs to the plaintiff. He told the court that the original allottee was Raymond Mwangi Waweru, who was a shareholder of Kiambu Dandora Farmers Association Ltd who later sold to the plaintiff.

8. In the case of **Shaneebal Ltd vs County Government of Machakos [2018] eKLR** the court observed that:-

“What are the consequences of a party failing to adduce evidence? In the case of Motex Knitwear Limited vs Gopitex Knitwear Mills Limited Nairobi (Milimani) HCCC No. 834 of 2002, Lesiit, J cited the case of Autar Sigh Bahra and Another vs Raju Govindji, HCCC No. 548 of 1998 appreciated that “Although the defendant had denied liability in an amended defence and counter claim, no witness was called to give evidence on his behalf. That means that not only does the defence rendered by the 1st plaintiff's case stand unchallenged but also that the claims made by the defendant in his defence and counter-claim are unsubstantiated. In the circumstances, the counterclaim must fail.”

I am guided by the above authority.

9. The upshot of the matter is that the plaintiff has proved his case against the defendant on a balance of probabilities. I enter judgment in his favour as follows:-

(a) That a permanent injunction is hereby issued restraining the defendants by themselves, their servants and or agents from evicting the plaintiff from or interfering with, constructing, selling, disposing, charging, transferring, or in any other matter, alienating the property known as Plot No. 257 (New survey No. 944) now known as Nairobi/Block 157/944 which was a subdivision of the parcel of land originally known as LR 11379/R.

(b) A declaration is hereby issued that the parcel of land known as Plot No. 257 (New Survey No. 944) now known as Nairobi/Block/157/944 which was a subdivision of that parcel of land originally known as LR 1/379/3/R belongs to the plaintiff and that any purported sale of the same is unlawful and consequently an order is hereby issued directing the second defendant to cancel the title issued in favour of the 1st defendant and to issue the same in the plaintiff's name.

(c) The plaintiff shall have costs of the suit and interests.

It is so ordered.

Dated, signed and delivered in Nairobi on this 17th day of DECEMBER 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Bosek for Mrs. Koki for the Plaintiff

No appearance for the Defendants

Kajuju – Court clerk