



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC. CASE NO. 295 OF 2012

STEPHEN NJONGE KIRURI (Administrator of the Estate of

Francis Kiruri Maina–Deceased).....PLAINTIFF

=VERSUS=

MICHAEL WAWERU MBUGUA.....1ST DEFENDANT

THE LAND REGISTRAR, NAIROBI.....2ND DEFENDANT

JUDGMENT

1. Francis Kiruri Maina (hereinafter referred to as “**the deceased**”) brought this suit on 28/5/2012 contending that he was the legitimate registered proprietor of Land Parcel Number Nairobi/Block 116/332 (hereinafter referred to as “**the suit property**”). He further contended that he visited the Land Registry in 2011 and discovered that the 1st defendant had fraudulently and illegally caused title of the suit property to be registered into his name and had obtained an illegal title to the property. He urged the court to grant him the following orders:

a) An order directed to the Land Registrar, Nairobi, to rectify the register by cancelling all entries made in the register on 16th March, 1994 and thereafter upon the property NAIROBI/BLOCK 116/332.

b) An order directed to the 2nd defendant to recall the certificate of title issued to the 1st defendant and cancel the same.

c) General damages for trespass.

d) Costs of this suit.

e) Interest on (c) and (d) hereinabove

f) Any other and/or further relief that this honourable court may deem fit and just to grant.

2. On 22/6/2012, Ougo J allowed the deceased to serve summons on the 1st defendant through an advertisement in the media. Consequently, on 31/8/2012, the plaintiff filed an affidavit of service sworn by Joel Ndunda Mutala, indicating that service was effected on 2/8/2012 through an advertisement in the Daily Nation Newspaper. The 1st defendant neither entered appearance nor filed defence. Consequently, the suit against the 1st defendant proceeded undefended.

3. The 2nd defendant entered appearance and filed a statement of defence dated 16/11/2012. It denied being privy to any fraudulent activity relating to the suit property. It denied the plaintiff's claim against it in its entirety and put the plaintiff to strict proof.
4. Francis Kiruri Maina subsequently died on 2/11/2015. His personal representative, Stephen Njonge Kiruri, obtained a limited grant of letters of administration on 12/4/2017. On 15/2/2018, this court allowed the estate's plea for substitution, bringing on board Stephen Njonge Kiruri as the personal representative of the deceased.
5. Trial took place on 3/10/2019. The plaintiff testified as PW1. He adopted his written witness statement dated 8/3/2018. He also adopted the witness statement which had been prepared and filed by the deceased prior to his death. His evidence was that in 1990, the deceased bought the suit property from a land buying company known as **Roysambu Housing Co-operative Society Limited**. He paid the full purchase price, transfer fee and survey fee. He was subsequently invited to Ardhi House to sign land registration documents and he was issued with a lease and certificate of lease.
6. PW1 further testified that in 2011, the deceased decided to dispose the suit property. Upon visiting the Lands Registry to obtain an official search to enable him dispose the suit property, he learnt that the parcel register reflected the 1st defendant as the registered proprietor of the suit property. He stated that the deceased neither sold nor transferred the suit property to the 1st defendant. He added that the deceased's efforts to trace the 1st defendant were fruitless despite written letters addressed to him through the postal address in the parcel register. Lastly, he testified that the deceased's request to the 2nd defendant to rectify the register had not elicited a response. He urged the court to grant the prayers sought in the plaint. He produced 12 exhibits, among them: (i) a lease registered on 16/5/1997; (ii) letter dated 16/11/2005 forwarding the lease from the Commissioner of Lands to the Land Registrar, Nairobi; (iii) certificate of lease dated 1/12/2005; and (iv) the impugned parcel register. The 2nd defendant did not lead any evidence.
7. I have considered the pleadings and evidence presented before me. In the absence of any controverting evidence by the defendants, the single issue falling for determination in this suit is whether the plaintiff has proved his case on a balance of probabilities to warrant any of the orders sought in the plaint.
8. It does appear from the lease dated 16/5/1997 and the certificate of lease dated 1/12/2005 that the plaintiff is the legitimate proprietor of the suit property. What is not clear is how the parcel register was opened on 29/7/1993 prior to the issuance and registration of the lease. The said register is what the plaintiff has impugned through this suit. The register currently bears the name of the 1st defendant as the registered proprietor. It previously bore the name of the deceased plaintiff but was cancelled by striking out his name in ink.
9. In the absence of any controverting evidence, I am satisfied that the plaintiff has proved the estate's case on a balance of probabilities. I will consequently grant the plaintiff the orders that were sought in the plaint except the prayer for damages.
10. Although the plaintiff prayed for general damages for trespass, no iota of evidence was led to support the claim for general damages for trespass. In the absence of evidence relating to trespass, I will not make any award relating to that limb of the claim.
11. Similarly, there is no evidence implicating the 2nd defendant in any unprocedural activity leading to the creation of the impugned entries. Consequently, there will be no adverse order against the 2nd defendant.
12. In light of the above findings I make the following disposal orders:

a) The Land Registrar, Nairobi, is directed to rectify the parcel register relating to Parcel Number Nairobi/Block 116/332 by cancelling all entries made therein, and align the parcel register with the lease and certificate of lease held by the estate of the late Francis Kiruri Maina.

b) The Land Registrar, Nairobi, is directed to recall the certificate of title issued to the 1st defendant (if any) and cancel it forthwith.

c) The 1st defendant shall bear costs of this suit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 10TH DAY OF DECEMBER 2019.

B M EBOSO

JUDGE

In the presence of:-

Mr Ngethe holding brief for Mr Mwaniki advocate for the plaintiff

Court Clerk - June Nafula