



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANG'A

ELC NO. 50 OF 2017

ESTHER WANJIRU MWANGLI.....1ST PLAINTIFF

NGURE GITAU.....2ND PLAINTIFF

RAHAB WANJIRU NJUGUNA.....3RD PLAINTIFF

VS

ZACHARIA KAMAU MWANGLI.....DEFENDANT

JUDGMENT

1. Vide an amended plaint filed on the 30/3/17 the Plaintiffs filed suit against the Defendant seeking the orders as follows;

a. Kshs 3,470,000/-

b. In the alternative 2 parcels of land within the same locality of equivalent size with the cancelled LOC 2/KANGARI/4373 and LOC 2/KANGARI/4374 plus an additional Kshs. 1,470,000 for the improvements done thereon.

c. In further alternative an order directing parcel of land known as LOC 2/KANGARI/4373 and LOC 2/KANGARI/4374 be transferred and registered in the names of the Plaintiffs.

d. Mense profits.

e. Costs and interest.

2. It is the Plaintiffs case that the Defendant fraudulently sold them two plots LOC 2/KANGARI/4373 and 4374 (suit lands) when he knew or ought to have known that he did not have any proprietary interest.

3. The Defendant on the other hand denied the Plaintiffs claim and insisted that he transferred genuine titles to the Plaintiffs but the same were cancelled by the Court on the instigation of Hannah Njeri.

4. At the hearing the Plaintiffs' evidence was led by Ngure Gitau who testified and relied on his witness statement dated the 16/12/14. That they purchased the suit lands from the Defendant at the cost of Kshs 764,000/- on the 9/11/2011 and upon full payment of the purchase price the title was transferred to their joint names on the 21/11/2011. However, as fate would have it the said titles were cancelled pursuant to the orders in HCCC Succ cause No 1 of 2006. The orders directed the cancellation of the suit lands and reversion to the original title 4250 which the Court ordered to be registered in the names of Hannah Njeri Mwangi Virginia Wangui Mwangi and Miriam Njoki Mwangi.

5. Upon completion of the purchase the Plaintiffs commenced the construction of a building on the suit lands which they were ordered to stop after the orders were issued in the succession cause.

6. That before executing the agreement of sale, they had carried out due diligence and found that the Defendant was the registered owner of the suit lands. That the Defendant did not inform them that there was a case in Kigumo in respect to the suit lands.

7. The witness produced a valuation report that showed the value of the incomplete building in support of their claim for refunds.

8. The Defendant testified and relied on his witness statement dated the 30/5/17 as his evidence in chief. He produced documents in support of his defense marked DEX1-6. He stated that he did not stop the Plaintiff from building on the land as he had sold the land about 4 years later. That at the point at which he sold the land the title was in his name. He admits that he duly executed the agreement for sale and

received the full purchase price. That there was no pending suit then and that the land titles were cancelled 5 years later. He denied fraud.

9. He admitted that he has not refunded the purchase price to the Plaintiffs to date. He argued that he fulfilled his part of the bargain by transferring land to the Plaintiffs and are not entitled to any land or refunds. He alluded to the fact that the Plaintiffs were aware of the suit case in Nyeri which he alleges they participated. He faulted the Plaintiffs for not suing Hannah Njeri the architect of the succession cause in Nyeri which led to the cancellation of the titles.

10. In respect to the parcel LOC 2/KANGARI/4252, he stated that he holds the land in trust for Samuel Mwangi and Martha Waitherero who are the beneficiaries and therefore he cannot transfer to the Plaintiffs.

11. The Plaintiffs submitted that the Defendant fraudulently subdivided parcel LOC 2/KANGARI/4250 into LOC 2/KANGARI/4317 and 4318 which land belonged to Martha Waitherero, his late mother. The parcel was to be transmitted to the Defendant's sisters upon her death but the Defendant subdivided and transferred it to the Plaintiffs without their consent and authority. That the Defendant did not have any title to pass to the Plaintiffs. That the Defendant knew of the existence of the case challenging his ownership and he went ahead to sell the lands to the unsuspecting Plaintiffs.

12. The Plaintiff submitted that they are bonafide purchasers for value without notice. That they carried out due diligence before purchasing the properties and were not aware of the Defendant's illegal schemes on the properties belonging to his sisters.

13. The Defendant on the other hand submitted that he cannot be blamed for the predicament of the Plaintiffs. He argued that by the time of selling the land to the Plaintiffs there was no suit pending and he owned the land. He blamed Hannah Njeri for the cancellation of the suit lands. He insisted that the parcel LOC 2/KANGARI/4252 in his name is being held in trust for the beneficiaries.

14. In conclusion he submitted that the Plaintiffs are only entitled to the initial purchase price without interest.

15. It is not in dispute that the suit properties were cancelled vide a Court order issued in Succ Cause No 1 of 2009. It is commonly accepted that the suit land upon cancellation were reverted to parcel LOC 2/KANGARI/4250 transmitted to the beneficiaries who are the Defendant's sisters. It is also not in dispute that the original land was owned by the Defendant's mother.

16. It is not in dispute that the Plaintiffs paid the full purchase price which has been admitted by the Defendant.

17. I have perused the Court ruling succ cause No 1 of 2009 and it is clear from the observations made by the Court that the parcel was registered in the name of the Defendant's sister but by 19/11/2009 the land had mysteriously been registered in the name of the Defendant and that the transaction to wit the subdivisions of parcel LOC 2/KANGARI/4250 and the eventual sale of the subdivisions comprising the suit land were suspect.

18. It is the finding of the Court that the Defendant cannot run away and feign ignorance on the happenings on the title. It would appear that the act of subdividing and transferring the suit lands was to defeat the rights of the beneficiaries, his own sisters.

19. It is the finding of the Court that the Defendant's acts led to the direct loss of the Plaintiffs.

20. From the evidence on record the Court is unable to find any wrongdoing on the part of the Plaintiffs. It is on record that they carried out a search at the lands office which showed that the suit land was owned by the Defendant. They led evidence that they were not aware of the suit case in Nyeri. This evidence was not rebutted by the Defendant. I cannot think of anything else that the Plaintiffs needed to do beyond the normal due diligence.

21. I observed the witness of the Plaintiffs testify in Court and found his evidence to be genuine truthful and cogent and am inclined to believe him.

22. The Plaintiff has adduced a valuation report which shows the value of the improvements inclusive the purchase price is Kshs 3,470,000/-. The Defendant has not rebutted this figure save to say that the Plaintiffs are only entitled to the initial purchase price. The agreement of sale was entered into on the 9/11/11 and this suit was filed on the 3/1/17, a period of less than 6 years. The claim is therefore not time barred.

23. I decline to grant the Plaintiffs the plot parcel No LOC 2/KANGARI/4252 because it is registered in the name of the Defendant in trust for disclosed beneficiaries who are not party to the suit.

24. The prayer for mesne profits is declined as it is unsupported.

25. In the upshot the Plaintiffs case succeeds and I grant prayers No.s a and e.

26. Costs in favour of the Plaintiff.

27. It is so ordered.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 5TH DAY OF DECEMBER 2019

J.G. KEMEI

JUDGE

Delivered in open Court in the presence of;

Mwaniki HB for Odero for the 1st – 3rd Plaintiffs.

Defendant: Absent

Irene and Njeri, Court Assistants