



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 183 "A" OF 2014

EMILY WANJIRA TUMBO (Suing as the Legal

Representative and Administratrix of the Estate of

MUTHUMBI WANDERI Alias DOUGLAS TUMBO

WANDERI (DECEASED).....PLAINTIFF

VERSUS

SHANDRACK MWANGI ETHAN.....1ST DEFENDANT

LEONARD MUNENE MWANIKI.....2ND DEFENDANT

JUDGMENT

By a plaint dated 4th June 2014 and filed herein on 6th June 2014, the plaintiff, suing as the legal representative and/or administratrix of the Estate of the late **MUTHUMBI WANDERI** aka **DOUGLAS TUMBO WANDERI** (the deceased) filed this suit against the two defendants seeking judgment in the following terms:

(a) A declaration that the registration of land parcel number KABARE/NGIROCHE/254 in the names of the 1st defendant was fraudulent and therefore null and void ab initio and therefore there was no title to pass to the 2nd defendant or any other person.

(b) Rectification of the register of land parcel number KABARE/NGIROCHE/254 by cancellation of the name of the 2nd defendant or any other person currently registered and to revert to MUTHUMBI WANDERI deceased.

(c) Costs of the suit with interest.

The record shows that on 22nd August 2014, the firm of **KIGURU KAHIGAH** Advocates entered appearance on behalf of the defendants but no defence was filed and so on 8th October 2014, interlocutory judgment was entered against the defendants. On 2nd September 2014, the defendants filed a notice of withdrawal of their advocate and indicated that future correspondences be addressed to them in person.

When the matter came up for formal proof on 28th September 2015, I directed that the defendants be

served and also allowed an oral application by counsel for the plaintiff to serve them by registered post and fixed the hearing for 26th November 2015 but the Court was not sitting on that day and an ex-parte hearing date was taken for 13th April 2016 and the defendants were duly served but did not turn up.

The case was however adjourned to 8th September 2016 as the plaintiff was absent. The trial did not proceed to hearing on that day and was fixed for hearing on 24th January 2018 when the defendants, though duly served again, did not attend Court.

The plaintiff who is the wife to the deceased asked the Court to rely on her statement and the documents filed in support of her case.

It is clear from that statement dated 4th June 2014 and the documentary exhibits No. 1 to 6 that the deceased died on 6th April 1985 and the plaintiff obtained a limited grant of letters of administration in respect of his Estate on 12th May 2014 vide **KERUGOYA HIGH COURT SUCCESSION CAUSE No. 44 of 2013** (Exhibit 1). Prior to his death, the deceased was the registered proprietor of land parcel No. KABARE/NGIROCHE/254 (the suit land) as per the Green Card (Exhibit 2). However, sometime in 2012, the plaintiff heard rumours that the suit land had been registered in the names of another person and so she placed a restriction on the land. She later discovered that the suit land had been registered in the names of the 1st defendant on 19th September 2008 pursuant to a certificate of confirmation issued in **NYERI HIGH COURT SUCCESSION CAUSE No. 89 of 2007**. However, upon perusal of that case file, it transpired that it was in respect of the Estate of one **JAMES MWENDIA KARIUKI** and not the deceased. The plaintiff further discovered that the restrictions placed on the suit land were removed pursuant to consent orders issued in **KERUGOYA SENIOR PRINCIPAL MAGISTRATE'S COURT MISCELLANEOUS APPLICATION No. 84 of 2012** in which the 1st defendant was the Applicant and the 2nd defendant the Respondent yet the person who placed the restrictions was not a party. The suit land was subsequently transferred by the 1st defendant to the 2nd defendant fraudulently thus giving rise to this suit.

The suit, as I have already indicated above, was not defended and so the plaintiff's averments of fraud as levelled against the two defendants in paragraph five (5) of the plaint are not controverted. This Court therefore has no reason to doubt the veracity of those allegations.

A perusal of the documentary exhibits produced by the plaintiff further confirms that indeed the suit land was fraudulently transferred by the 1st defendant to the 2nd defendant. It is clear from the Green Card (Exhibit 2) that the suit land was since 8th December 1958 registered in the names of the deceased. However, on 19th September 2008, it was transferred to the 1st defendant on the strength of orders issued in **NYERI HIGH COURT SUCCESSION CAUSE No. 89 of 2007**. The grant of letters of administration issued in that case show however that it was in respect of the Estate of one **JAMES MWENDIA KARIUKI** and not the deceased in this case. (Exhibit 4). It is also not clear how the Principal Magistrate Kerugoya could have removed the restrictions on the suit land vide orders issued in **SENIOR PRINCIPAL MAGISTRATE'S MISCELLANEOUS APPLICATION No. 84 of 2012** (Exhibit 6) yet none of the parties therein had placed the restriction on the suit land. That order was therefore obtained fraudulently.

It is clear from the above that whereas the 2nd defendant is the current registered proprietor of the suit land, that registration cannot benefit from the protection accorded by **Section 26 (1) of the Land Registration Act** because it was obtained fraudulently.

The plaintiff has established her case against the defendants as required in law and I therefore enter judgment for her against the defendants jointly and severally in the following terms:

1. A declaration that the registration of land parcel No. KABARE/NGIROCHE/254 in the names of the 1st defendant was fraudulent and therefore null and void ab initio and that there

was no good title to pass to the 2nd defendant.

2. An order for the rectification of the register of land parcel No. KABARE/NGORICHE/254 by cancellation of the names of the 2nd defendant and to revert to MUTHUMBI WANDERI – deceased.

3. No order as to costs.

B.N. OLAO

JUDGE

26TH JANUARY, 2018

Judgment dated, delivered and signed in open Court this 26th day of January 2018 at Kerugoya

Mr. Ngigi for Mr. Kagio for Plaintiff present

No appearance for Defendants

Plaintiff present.

B.N. OLAO

JUDGE

26TH JANUARY, 2018