



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**CASE No. 103 OF 2013**

**JULIUS WAIHARO MARIUKO.....PLAINTIFF**

**VERSUS**

**DAVID MUHORO KARANJA.....DEFENDANT**

**JUDGMENT**

1. By plaint dated 24<sup>th</sup> January 2013, the plaintiff herein commenced these proceedings and sought judgment against the defendant in the following terms:

*a) To issue a judgment therein declaring the Plaintiff as the rightful and lawful owner of parcel of land known as LR Kiambogo/ Kiambogo Block 2/2611.*

*b) Further to the above an order directing cancellation of the title deed in respect of same parcel of land issued to the Defendant and instead a new one be issued to the plaintiff.*

*c) A perpetual injunction restraining the defendant by himself, agents, employees, servants, legal representatives or anybody claiming from him, from representing himself as the owner of land LR Kiambogo/Kiambogo Block 2/2611, entering therein, occupying the same, or dealing in any other manner with the same.*

*d) Costs of this suit.*

2. Though served with Summons to Enter Appearance, the defendant did not enter appearance and did not participate in the hearing of the suit.

3. At the hearing, only the plaintiff testified and did not call any other witness. He adopted his witness statement filed herein and dated 24<sup>th</sup> January 2013 as part of his evidence in chief. He further testified that he was a member and shareholder of Mwariki Farm Company Ltd. He was issued with share certificate number 65. He produced a copy of it as Plaintiff's Exhibit 1. He was allocated parcel of land known as **Kiambogo/Kiambogo Block 2/169** measuring 11 acres. He produced a certified copy of the green card in respect of the plot as Plaintiff's Exhibit 2. He obtained consent dated 26<sup>th</sup> October 1994 from the Land Control Board to subdivide the plot. He produced a copy of consent as Plaintiff's Exhibit 3. He accordingly subdivided the plot into 80 new plots. All the subdivisions were registered in his name.

4. One of the new subdivisions was **Kiambogo/Kiambogo Block 2/2611**. He conducted a search on it at the land registry on 27<sup>th</sup> November 2012 and the result showed that the owner of this new plot was David Muhoro Karanja, the defendant herein, instead of the plaintiff. He produced a copy of Certificate of Official Search dated 27<sup>th</sup> November 2012 as Plaintiff's Exhibit 4. He also lodged complaints with the Ministry of Lands in Nairobi and the Permanent Secretary wrote a letter dated 20<sup>th</sup> September 2012. He produced a copy of the letter as Plaintiff's Exhibit 5. He also produced a certified copy of the green card for **Kiambogo/ Kiambogo Block 2/2611** as Plaintiff's Exhibit 6.

5. The plaintiff further testified that the register was opened on 21<sup>st</sup> February 1995 and that it shows that **Kiambogo/ Kiambogo Block 2/2611** is a subdivision of **Kiambogo/Kiambogo Block 2/169**. He added that entry No. 1 shows that on 21<sup>st</sup> February 1995 he was the owner. Entry No. 2 dated 30<sup>th</sup> November 1999 shows the owner as David Muhoro Karanja and title deed issued to him on the same date. He stated that he never sold the plot to the defendant and that he does not know the defendant and has never met him. As at the time he testified, there was no one in occupation of the plot. He told the court that the plot is his and urged the court that the title be cancelled since the defendant obtained registration behind his back and through fraud.

6. In submissions, Mr. Kibet learned counsel for the plaintiff submitted that the plaintiff had proven his case and that his evidence was not challenged. He prayed that the defendant's title be cancelled and the Land Registrar be directed to issue a new title in the name of the plaintiff. He also sought a perpetual injunction against the defendants as prayed in the plaint as well costs of the suit.

7. I have considered the pleadings, the evidence and the submissions. The plaintiff's case and evidence is not challenged by the defendant. There is consistency between the plaintiff's testimony and the exhibits produced. Plaintiff's exhibit 2 is a certified true copy of an extract of the register in respect of **Kiambogo/Kiambogo Block 2/169 (Mwariki)**. It is certified by the land registrar and shows that the plaintiff was the registered proprietor thereof until 21<sup>st</sup> February 1995 when the title was closed upon subdivision to new numbers 2540 to 2619. The plaintiff's testimony was that he subdivided **Kiambogo/Kiambogo Block 2/169 (Mwariki)** into 80 new plots and that all the subdivisions including **Kiambogo/Kiambogo Block 2/2611**, the suit property, were registered in his name. The defendant somehow became the registered owner on 30<sup>th</sup> November 1999. Again, all this is verified by the certified copy of the green card for the suit property which the plaintiff produced as Plaintiff's Exhibit 6.

8. I have no reason to doubt the plaintiff's testimony that he never sold or transferred the suit property to the defendant. I also accept the plaintiff's testimony that the registration in favour of the defendant must have been procured through fraud. Since the registration is in his favour, the defendant must have been involved in it.

9. Whereas under **Section 26** of the **Land Registration Act** a certificate of title is to be held as conclusive evidence of proprietorship, the said section also makes it possible to challenge a certificate of title on the grounds that it was obtained through fraud or misrepresentation to which the registered owner is a party; or that it has been acquired illegally, unprocedurally or through a corrupt scheme. From the evidence adduced in this case, I am satisfied that most, if not all the foregoing malpractices took place.

10. I am therefore satisfied that the plaintiff has proven his case. I enter judgment in favour of the plaintiff as follows:

- a) It is hereby declared that the plaintiff is the rightful owner of parcel of land known as **Kiambogo/ Kiambogo Block 2/2611**.
- b) The District Land Registrar Nakuru County is hereby directed to forthwith cancel the title deed issued to the defendant in respect of **Kiambogo/ Kiambogo Block 2/2611** and instead a new one in the name of **Julius Waiharo Mariuko**, the plaintiff.
- c) A perpetual injunction is hereby issued restraining the defendant by himself, agents, employees, servants, legal representatives or anybody claiming under him from representing himself as the owner of parcel of land known as **Kiambogo/Kiambogo Block 2/2611**, from entering therein, occupying the same, or dealing in any other manner whatsoever with the same.
- d) Costs of this suit are awarded to the plaintiff.

11. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 28<sup>th</sup> day of February 2018.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Mr. Andama holding brief for Mr. Kibet for the plaintiff

No appearance for the defendant

Court Assistant: Gichaba/Lotkomoi