



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 868 OF 2012**

**AMOS TIROP MATUI.....1<sup>ST</sup> PLAINTIFF**

**OKILGEI WOMEN GROUP.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**FESTUS K. KIPRONO.....1<sup>ST</sup> DEFENDANT**

**COMMISSIONER OF LANDS.....2<sup>ND</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, UASIN GISHU.....3<sup>RD</sup> DEFENDANT**

**RULING**

Amos Tirop Matui and Okilgei Women Group have come to court against Festus K. Kiprono, Commissioner of Lands and the District Land Registrar, Uasin Gishu. The dispute revolves on purchase of land and fraud and or illegality on the part of the defendants. The plaintiffs' claim against the defendants is a declaration that the suit land is private land belonging to the plaintiffs and cannot therefore, be alienated to 3<sup>rd</sup> parties and plaintiffs seek a declaration that the 1<sup>st</sup> plaintiff is the owner of the land in dispute and the documents held by the 1<sup>st</sup> defendant are fraudulent, illegal, null and void and of no legal consequences. The defendants pray that the 1<sup>st</sup> plaintiff surrenders the documents to be destroyed. Moreover, the plaintiff prays for an injunction. All parties agree that the value of the subject matter is less than Kshs. 20,000,000. The bone of contention is whether the Magistrate's Court have jurisdiction to entertain the dispute due to the fact that there is a prayer for cancellation of title.

Mr. Tororei, learned counsel for the 1<sup>st</sup> plaintiff argues that the Magistrate's Court have the jurisdiction to determine cancellation of title. He argues that it is the intention of legislature to give jurisdiction of the Magistrate's Courts. He argues that in the Registered Land Act, Cap. 300, Laws of Kenya was repealed by the Land Registration Act which does not restrict the powers of the Magistrates as opposed to the old law that specifically gave jurisdiction to the High Court on cancellation of title. Mr. Tororei argues that the court should give a purposive and progressive interpretation of the Act. He states that the value of the subject matter is not more than Kshs.6.5 Million and therefore, the Magistrate's Court have jurisdiction.

Mr. Kibii, learned counsel for the 1<sup>st</sup> defendant argues that the law is currently silent on jurisdiction of subordinate courts on rectification of the register and cancellation of title. Section 32 of the repealed Registered Land Act Cap 300 Laws of Kenya empowered the High Court to cancel a register. The new laws do not have the express provision for cancellation of title.

Mr. Odongo, learned State Counsel for 2<sup>nd</sup> and 3<sup>rd</sup> defendants argues that the law is silent on whether the Magistrate's Courts have jurisdiction to cancel a title. He argues that section 26 of the Environment and Land Court Act gives Magistrates jurisdiction to hear any dispute relating the title to land, however, no express provisions are given to the Lower Court to cancel title and therefore, the Lower Courts have no jurisdiction.

Mr. Yego learned counsel for 4<sup>th</sup> respondent argues that the claim before court relates to legality of title. The suit property is valued at 6.5 Million. He submits that the Magistrate's Court has the prerequisite jurisdiction to entertain the dispute.

I have considered the submissions of counsels and do find that the value of the suit property is approximately 6.5 Million Shillings and therefore, the Magistrate's Court has pecuniary jurisdiction to entertain the dispute herein under section 7 of the Magistrates' Court Act no 26 of 2015. However, the issue is whether the Magistrate's Court have the jurisdiction to cancel a title or to order for the rectification of the register. Article 162(2)(b) of the Constitution provides that this Court shall have jurisdiction over disputes relating to the environment and the use and occupation of, and title to land. In addition, section 13 of the Environment and Land Court Act expounds on the jurisdiction of this Court as follows:

**“(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.**

**(2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—**

**(a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;**

**(b) relating to compulsory acquisition of land;**

**(c) relating to land administration and management;**

**(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and**

**(e) any other dispute relating to environment and land.”**

The Environment and Land Court Act grants jurisdiction to the Environment and Land Court under section 13 (7) to do the following, thus: -

**“...to make any order and grant any relief as the Court deems fit and just, including—**

**(a) interim or permanent preservation orders including injunctions;**

**(b) prerogative orders;**

**(c) award of damages;**

**(d) compensation;**

**(e) specific performance;**

**(f) restitution;**

**(g) declaration; or**

**(h) Costs.”**

Section 26 of the Environment and Land Court Act provides for the Sitting of the Court thus: -

**(1) The Court shall ensure reasonable and equitable access to its services in all Counties.**

**(2) A sitting of the Court may be held at such places and at such times, as the Court may deem necessary for the expedient and proper discharge of its functions under this Act.**

**(3) The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country.**

**(4) Subject to Article 169(2) of the Constitution, the Magistrate appointed under sub-section (3) shall have jurisdiction and power to handle —**

**(a) disputes relating to offences defined in any Act of Parliament dealing with environment and land; and**

**(b) matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the Magistrates' Courts Act.**

**(4) Appeals on matters from the designated magistrate's courts shall lie with the Environment and Land Court.”**

Section 9 of the Magistrates' court Act deals with claims in employment, labor relations claims; land and environment cases and provides that a magistrate's court shall in the exercise of the jurisdiction conferred upon it by section 26 of the Environment and Land Court Act (Cap. 12A) and subject to the pecuniary limits under section 7(1), hear and determine claims relating to; environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; (ii) compulsory acquisition of land;(iii) land administration and management; (iv)public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and (v) environment and land generally.

**Section 80 of the Land Registration Act Cap 12A of the Laws of Kenya provides for rectification** of the register by order of Court. The section provides that Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake and that the register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.

Section 2 of the Act defines court to mean the Environment and Land Court established by the Environment and Land Court Act, 2011 and other courts having jurisdiction on matters relating to land and therefore the argument by counsel that the law is silent on the powers of the magistrate's court in rectification of the register are without basis as the law is very clear in sections 2 and 80 of the Land Registration Act Cap 12A laws of Kenya that the courts referred to include the other courts with jurisdiction to hear environment and land matters which are the magistrates courts.

In conclusion, I do find that the powers of the magistrate's court in respect of disputes relating to title to land are very wide and extensive. The Magistrates court have jurisdiction to cancel title and rectify a register in compliance with section 80 of the Land Registration Act so long as the value of the subject matter falls within the pecuniary jurisdiction of the court. Ultimately, this matter is transferred to the Chief Magistrates Court Eldoret for hearing and determination.

**Dated and delivered at Eldoret this 25<sup>th</sup> day of April, 2018.**

**A. OMBWAYO**

**JUDGE**