



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

MILIMANI LAW COURTS

ELC. CASE NO. 352 OF 2009

LUCY WAMAITHA KIARIE.....PLAINTIFF/APPLICANT

VERSUS

NDANGA PROPERTIES LIMITED.....1ST DEFENDANT

HON. ATTORNEY GENERAL.....2ND DEFENDANT

JUDGMENT

This suit was filed by way of a Plaint dated and filed on 16 July 2009 in which the Plaintiff seeks for judgment to be entered against the Defendants in the form of an order directed at the Land Registrar Thika to cancel title deed to the parcel of land known as Ruiru/KIU Block 7/24 (hereinafter referred to as the “suit property”) issued in the names of the 1st Defendant and execute a reversion to the old title deed issued in the name of the Plaintiff on 21st February 1995. The Plaintiff also seeks for costs of the suit and interest thereon at court rates.

The Pleadings

According to the Plaintiff, the suit property was registered in the name of Gatheca Family Company Limited of which she was a shareholder and that the said company allocated the suit property to her on 21 February 1995. It is the Plaintiff’s case that on or about 2nd September 2008, she became desirous of selling the suit property. She further stated that a prospective purchaser conducted a search on the suit property at the Land Registry Thika. The search results revealed that the suit property was registered in the name of the 1st Defendant, Ndanga Properties Limited. She revealed that the green card indicated that the 1st Defendant was issued with a title to the suit property on 15th February 2000, by which date she was the first absolute registered proprietor thereof. The Plaintiff averred that she has not at any time had any dealings and or sale agreement with the first defendant over the suit property and to date retains the original title deed. It is her case that the registration of the suit property in the name of the first defendant is illegal and was acquired by way of fraud.

Permission to serve the 1st Defendant by way of substituted service was sought and granted on 10th February 2011. As no response was received, the Plaintiff sought for and successfully obtained entry of judgment in default of appearance and the suit proceeded for formal proof on 29th October 2015.

The Evidence

It was the Plaintiff’s testimony that this suit property was previously owned by the Gatheca Family Company Ltd of which she was a shareholder. As proof of this statement she produced a statement of dividends as her first exhibit. According to that statement of dividends, she was allocated a 1 acre parcel of land being the suit property. It was her testimony that she was issued with a title deed to the suit property on 21st February 1995, a copy of which she produced to the court in evidence. She then informed the court that she wanted to sell this suit property and got a prospective buyer who conducted a search of the suit property at the Land Registry Thika only to receive results that the suit property was registered in the name of the 1st Defendant Ndanga Properties Ltd. She produced a copy of this search results obtained by the prospective buyer. It was her testimony that it is upon seeing these search results that she filed this suit. She confirmed that she issued a notice of intention to sue to the 1st and 2nd Defendants of which only the 2nd Defendant responded by a letter dated 23 January 2009. It is her case that the transfer to the 1st Defendant was fraudulent because she did not transfer the land. She said that there was sale agreement or consent to transfer to support the transfer to the 1st Defendant. She added that she still holds her original title deed which was not cancelled upon the purported transfer to the 1st Defendant. She blamed the Land Registrar Thika because according to her everything was done fraudulently. She requested the court to cancel the registration in the name of the 1st Defendant and revert the suit property back into her

name.

The second witness to testify for the Plaintiff was Simon Muturi (PW2). He confirmed that he is the prospective buyer who approached the Plaintiff indicating his interest in purchasing the suit property. He confirmed being the one who carried out a search on the suit property being Plaintiff’s exhibit 3 which indicated that the suit property was registered in the name of the 1st Defendant. He confirmed having declined to purchase the suit property as a result. That was the close of the Plaintiff’s case.

The Determination

There is only one issue arising in this suit for determination and this is who the owner of the suit property is. The Plaintiff has claimed that she is the registered proprietor of the suit property and in support of her assertion, she has produced before this court a copy of her title deed dated 21st February 1995. The only challenge to the Plaintiff’s claim of proprietorship came by way of the green card and certificate of official search dated 2nd September 2008 which indicates that the suit property currently stands registered in the name of a company known as Ndanga Properties Limited which is the 1st Defendant in this suit. Though the 1st Defendant was served with summons by way of substituted service, they never entered appearance nor filed a defence and interlocutory judgment was entered against it. To my view, the Plaintiff’s assertion of ownership of the suit property stands unchallenged.

The law is very clear on the position of a title holder of land such as the Plaintiff. The position of the holder of a title deed over a parcel of land is well stated in **Section 26(1)** of the **Land Registration Act** provides as follows:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner , ... and the title of that proprietor shall not be subject to challenge, except-

(a)On the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

In this suit, the Plaintiff’s title deed has not been challenged by any of the Defendants. The court therefore arrives at the finding that the Plaintiff has proved that she is the duly registered owner of the suit property. With this finding, it follows that the Plaintiff has the rights over the suit property as set out in **section 24(a)** of the **Land Registration Act** provides as follows:

“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

I find that the Plaintiff is entitled to have vacant possession of the suit property to the exclusion of the Defendants. In light of the foregoing finding,

I hereby proceed to enter judgment in this suit as prayed in the Plaint with costs to the Plaintiff.

SIGNED AND DATED BY HON. LADY JUSTICE MARY M. GITUMBI

AT NAIROBI THIS 12TH DAY OF APRIL 2018.

MARY M. GITUMBI

JUDGE

DELIVERED BY HON. MR. JUSTICE SAMSON OKONGO THIS 19TH DAY OF APRIL 2018.

SAMSON OKONGO

PRESIDING JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendant

.....Court clerk