



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 404 OF 2015

JAMES KAMAU MBUGUA KARIS.....APPLICANT

VERSUS

SUSAN JEPTANUI BUNDI.....RESPONDENT

J U D G M E N T

By plaint dated 5.11.2015, *James Kamau Mbugua Karis (hereinafter referred to as the plaintiff)* has brought this suit against Susan Jeptanui Bundi herein after referred to as the defendant claiming that at all at all material times of this suit, the plaintiff was and is still the lawful owner of that parcel of land known as Uasin Gishu/Kimumu/4005 (*hereinafter referred to as the suit property*) pursuant to the decree issued in the High Court of Kenya at Eldoret, being Eldoret HCCC No. 59 of 2012 (OS). On the 22.2.2012, the plaintiff had presented his documents of transfer to Uasin Gishu Land Registry, Eldoret but the said documents were not registered because there was pending in the said title a caution lodged by the defendant herein. The said caution was removed pursuant to the decree above.

On or above 23.10.2015, the plaintiff learnt that the defendant had caused the said property to be transferred to herself. Upon further enquiries, a search conducted in the Lands Registry revealed that the certificate of title was issued on the 17th August 2015 in favour of the defendant. It is the plaintiff's contention that the said acts by the defendant in obtaining the certificate of title were done illegally and / or fraudulently.

The Particulars of fraud and/or illegality on the part of the defendant either by herself/agents and/ or servants are:-

- a) Taking possession and/or illegally and/or fraudulently acquiring title over the suit land without the consent of the plaintiff and consequently violating the plaintiff's constitutional Right to peaceful enjoyment of his proprietary rights.**
- b) Trespassing and/or encroaching into the plaintiff's parcel of land.**
- c) Failing to comply with the mandatory legal requirements regulating property in land and in particular failing to follow all the procedures precedent to the issuance of certificate of title.**
- d) Failing to disclose to M/S Highlands Valuers the existence of the decree hereinabove and in the process fraudulently causing the transfer to be executed in her favour without any consideration.**
- e) Acquiring the title without any valuable consideration.**
- f) Defeating the cause of justice.**

As a result of the defendant's acts to wit, the fraudulent acquisition of the certificate of title over the above parcel, the plaintiff has been unable to acquire a certificate of title over the suit land and has therefore suffered loss and damage. The plaintiff's claim against the defendant is for an order of revocation of title issued on the 17th day of August 2015 over that parcel of land known as Uasin Gishu/Kimumu/4005.

The plaintiff further avers that despite demand and notice of intention to sue having been issued, the defendant has refused/neglected and / or ignored to surrender the illegally acquired certificate of title hence necessitating this suit. There has not been and there is no other suit pending between the plaintiff and the defendant over the same subject matter.

The plaintiff prays for:

- a) An order revoking the certificate of title issued on 17.08.2015 over that parcel of land known as Uasin Gishu/Kimumu/4005 illegally issued in favour of SUSAN JEPTANUI BUNDI**

b) An order requiring the District land Registrar – Uasin Gishu District to cause registration of the plaintiff’s documents presented for registration on the 22.2.2012 and issue a proper title over that parcel of land known as Uasin Gishu/Kimumu/4005 in favour of the plaintiff herein.

c) An order of permanent injunction restraining the defendant either by herself, her agents, her employers and / or assigns from entering, trespassing into and / or in any other way interfering and/or dealing with the plaintiff/s property known as Uasin Gishu/Kimumu/4005.

d) Costs of this suit.

The defendant failed to file a memorandum of appearance and defence even after being duly served. When the matter came up for hearing the plaintiff stated under oath that he is the lawful owner of the suit property herein known as Uasin Gishu Kimumu/4003 pursuant to a court order issued by the High Court of Kenya Eldoret in HCCC.N.51 of 2012 (O.S) between Susan Jeptanui Bundi (Defendant) and James Kamau Mbugua (Plaintiff).

That he presented the documents of transfer to Uasin Gishu Land Registrar Eldoret but the said documents were not registered because there was pending in the said title a caution lodged by the defendant herein. The said caution has since been removed pursuant to the decree herein before referred to.

That on or about 23.10.2015, he learnt that the defendant has caused the said property to be transferred to herself despite the decree herein. He has been in possession of the property for 8 years.

The plaintiff produced Judgment dated, signed and delivered at Eldoret on the 29.7.2015. The Honourable Justice Kanyi Kimondo found that the suit property was not matrimonial property. The suit property is known as Uasin Gishu/Kimumu Scheme/4005. The register was opened on 5.5.2006 after subdivision of plot no.19. It was registered in the name of Highland Valuers Limited.

On the 7.12.2012, a restriction was entered to the effect that no dealings without the consent of Susan Jeptanui Bundi claiming an interest as a purchaser. On the 23.4.2012, an entry of a court order restraining any transaction pending hearing and determination was entered. On the 6.8.2015, entry No.2 was withdrawn by Limo R. K. Advocate acting on behalf of the defendant. On the 14.8.2015, a decree was registered indicating that the suit was dismissed and on 17.8.2015, the defendant was registered as the owner of the property and title deed issued. On the 23.10.2015, a restriction was entered on behalf of Highland Valuers and an injunction was issued by this court and registered on 6.11.2015.

This court finds that the defendants claim on the suit property having been dismissed by the High court, the defendant has no further claim in the suit property. Highlands Valuers Limited, the original owners having disowned the defendant, the said defendant’s registration as owner of the suit property in questionable. The defendant did not file defence or appear in court though served.

I do find that the plaintiff is the lawful owner of the property having bought the same from Highlands Valuers Limited, not signed a transfer of land to James K. Mbugua Karis.

The application to the Land Control Board was made and consent obtained. The transfer was presented to the Land Registrar on 22.2.2012 but could not be registered due to the fact that the defendant was the registered proprietor. This prompted the plaintiff to come to court for the orders sought.

I do find that the plaintiff has proved his case on a balance of probability that he is the lawful owner of the suit property. I do grant an order revoking the certificate of title issued on 17.08.2015 over that parcel of land known as Uasin Gishu/Kimumu/4005 in favour of SUSAN JEPTANUI BUNDI and further I do grant an order requiring the District Land Registrar – Uasin Gishu District to cause registration of the plaintiff’s documents presented for registration on the 22.2.2012 and issue a proper title over that parcel of land known as Uasin Gishu/Kimumu/4005 in favour of the plaintiff herein. Lastly, I do grant an order of permanent injunction restraining the defendant either by herself, her agents, her employers and/or assigns from entering, trespassing into and / or in any other way interfering and/or dealing with the plaintiff/s property known as Uasin Gishu/Kimumu/4005. Costs of this suit are granted to the plaintiff.

Dated and delivered in Eldoret this 29th June 2018.

ANTONY OMBWAYO

JUDGE