



**Were v Wanguche (Sued as Personal Representative of the Estate of
Honourous John Wanguche - Deceased) & 2 others (Environment & Land
Case E010 of 2021) [2024] KEELC 264 (KLR) (31 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 264 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE E010 OF 2021
DO OHUNGO, J
JANUARY 31, 2024**

BETWEEN

JUMA KUSINYO WERE PLAINTIFF

AND

**JOSEPH MUNYENDO WANGUCHE (SUED AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF HONORIOUS JOHN WANGUCHE -
DECEASED) 1ST DEFENDANT**

SAIDI ABUBAKAR WERE 2ND DEFENDANT

HAMISI AMAKOBE ODWORI 3RD DEFENDANT

JUDGMENT

1. The plaintiff moved the court through plaint dated 19th July 2021 in which he averred that he was the registered proprietor of the parcel of land known as North Wanga/Koyonzo/1033 (the suit property) and that Honourous John Wanguche (since deceased) who was the defendants' father fraudulently caused him to execute sale agreement and transfer of the suit property in his favour. He added that the deceased obtained a forged title document in respect of the suit property and further averred that the second and third defendants are the registered proprietors of the parcels of land known as North Wanga/Koyonzo/2690, 2691 and 2692 which are subdivisions of the suit property.
2. The plaintiff therefore prayed for judgment against the defendants jointly and severally for:
 - a. An order be issued to the Kakamega County Land registrar to cancel titles deeds i.e. L.R. No. North Wanga/Koyonzo/2690, 2691 and 2692 all arising from L.R. No. North Wanga/Koyonzo/1033 and the same reverts back to L.R. No. North Wanga/Koyonzo/1033 as it was on 06/05/1986 in the names of the Plaintiff.



- b. Upon the grant of order a) above the Defendants jointly and severally either by themselves, their employees, servants or agents or anyone who claims from them be restrained by an order of permanent injunction from dealing in any manner with the restored L.R. No. North Wanga/ Koyonzo/1033.
 - c. Upon the grant of order a) herein the Defendant do deliver vacant possession of the restored L.R. No. North Wanga/Koyonzo/1033.
 - d. Costs of this suit with interest.
 - e. Any other relief this Honourable court may deem fit.
3. The defendants filed a joint statement of defence in which they denied the plaintiffs allegations of fraud and forgery but the second and third defendants admitted being the registered proprietors of the parcels mentioned in the plaint. They therefore urged the court to dismiss the suit with costs.
4. At the hearing, the plaintiff testified as the sole witness in support of his case and adopted his witness statement dated 19th July 2021. He stated that the suit property was initially registered in his two names of Kusinyo Were on 9th January 1967 as a minor and that after he obtained a national identity card the suit property was later registered in his three names Juma Kusinyo Were on 6th May 1986. That on 27th November 1986, Honourious John Wanguche (deceased) who was the first defendant's father leased the suit property for three harvests for purposes of growing sugarcane at a consideration of Ksha 20,000 and that the deceased took him to the District Magistrate's Court Mumias on 18th May 1987 and told him that he was ready to pay KShs 10,000 as part payment of the consideration for the lease when in fact the deceased had prepared a fraudulent transfer document. That the deceased caused him to execute a sale agreement and transfer of the suit property in his favour and obtained a forged title document in respect of the suit property without the plaintiff surrendering title document and without the plaintiff appearing before the Land Control Board. He added that the second and third defendants are the registered proprietors of the parcels of land known as North Wanga/Koyonzo/2690, 2691 and 2692 which are subdivisions of the suit property.
5. The plaintiff produced copies of the documents listed as numbers 1 to 7 in his list of documents dated 19th July 2021 as his exhibits and further testified that he was residing at a with his family at a market centre as of the date of his testimony because he did not have a home. That although he owned a parcel of land being South/Wanga/Buchifi/3018 which was gifted to him in the year 2016 so as to provide him with a home, he had not been able to develop it owing to lack of money. He also stated that he is an Imam at Buchifi Mosque and that he went through primary school education up to class seven and sat for Certificate of Primary Education in 1981 but was unable to proceed with secondary education since he was an orphan. That he learnt English language in primary school and that although he signed an agreement with the deceased on 18th May 1987, he was misled into signing it. That consent of the Land Control Board was granted for the transaction through tricks and that Joseph Malala Sakwa who is his elder brother obtained a loan from KCB in 1986 using the suit property as security then defaulted. He added that he (the plaintiff) has never resided on the suit property, but the deceased resided on it and used it. That he filed a case at the High Court in Kakamega in the year 2003 and that the case was later transferred to Mumias Law Courts. The plaintiff's case was closed at that point.
6. Joseph Munyendo Wanguche testified as DW1 and adopted his witness statement dated 6th December 2022. He stated that Honourious John Wanguche (deceased) who was his father passed away in the year 2004 and that he (DW1) obtained letters of administration in respect of the deceased estate in Kakamega HC Succession Cause No. 162 of 2006. That Certificate of Confirmation of Grant was



issued in the succession cause on 29th May 2008 wherein the court ordered that the suit property be registered in the names of Ali Juma Okumu and John Ndoli Olukokolo who had purchased it from Moses N. Wanguche who was a son to the deceased.

7. DW1 went on to testify that after leasing the suit property through the agreement dated 27th November 1986, the deceased purchased the suit property from the plaintiff through an agreement dated 18th May 1987. That the plaintiff applied for consent from Mumias Division Land Control Board and that the board granted consent through minute 27/88 of 12th January 1988. That the application for consent was signed by both the plaintiff and the deceased on 11th January 1988 and that they signed transfer form on 12th February 1988.
8. DW1 also stated that the plaintiff's allegations that he is literate are untrue since he went to Mukhuwa Primary School where he sat for C.P.E in 1981 under index No. 63632008 and later proceeded to Budalangi Secondary in Busia County but did not complete secondary education up to form four. That the plaintiff is an Imam who gives lectures in Kiswahili, English, and Arabic. He also testified that the transfer of the suit property to the deceased was not fraudulent and that upon its transfer to Ali Juma Okumu and John Ndoli Olukokolo on 29th May 2009, the said Ali Juma Okumu and John Ndoli Olukokolo subdivided it into three parcels namely North Wanga/Koyonzo/2690 which they transferred to the second defendant and North Wanga/Koyonzo/2691 and North Wanga/Koyonzo/2692 both of which they transferred to the third defendant. That after the plaintiff sold the suit property to the deceased, the plaintiff together with his cousin Joseph Malala Sakwa obtained a loan from Kenya Commercial Bank using the suit property as collateral and that upon discovering the development the deceased had to pay the amount owing to the bank before processing title in his name. That the plaintiff has not resided on the suit property since 1986 and instead resides on his land parcel number S. Wanga/Buchefi/3018. DW1 produced the documents listed as item numbers 1 to 12 in the defendants' list of documents dated 6th December 2022 as defence exhibits 1 to 12, respectively. Under cross examination, DW1 stated that the deceased purchased the suit property at a consideration of KShs 20,000 out of which he paid KShs 10,000 leaving a balance of KShs 10,000. He could not however tell if the balance was paid.
9. Next on the stand was Saidi Abubabakari Were (DW2) who stated that he is the registered proprietor of land parcel number North Wanga/Koyonzo/2690 and that he was farming on the parcel without staying on it as of the date of his testimony. He adopted his witness statement dated 6th December 2022 and stated that he purchased the parcel from Ali Juma Okumu and John Ndoli Olukokolo after conducting a search and doing due diligence. That the said sellers applied for and obtained consent of the Land Control Board and after which the land was transferred to him.
10. Lastly, Hamisi Amakobe Odwori testified as DW3 and stated that he was the registered proprietor of land parcel numbers North Wanga/Koyonzo/2691 and North Wanga/Koyonzo/2692. Just like DW2, he stated that he purchased the parcels from Ali Juma Okumu and John Ndoli Olukokolo after conducting a search and doing due diligence and that the said sellers applied for and obtained consent of the Land Control Board and after which the parcels were transferred to him.
11. Defence case was then closed after which parties filed and exchanged written submissions.
12. I have considered the parties' pleadings, evidence, and submissions. The issues that arise for determination are whether fraud has been established and whether the reliefs sought should issue.
13. There is no dispute that the plaintiff was registered as the proprietor of the suit property initially on 9th January 1967 and later on 6th May 1986. Title deed was issued to him on 14th July 1986. It is further not in dispute that the deceased became registered proprietor of the suit property on 6th May 1988 and



that title deed was issued to him on 14th November 1988. Later, Ali Juma Okumu and John Ndoli Olukolo became registered proprietors by transmission on 29th May 2009 and the tittle was closed on 25th April 2012 upon subdivision into North Wanga/Koyonzo/2690, 2691 and 2692.

14. It is equally not in dispute that currently, the second defendant is the registered proprietor of North Wanga/Koyonzo/2690 while the third defendant is the registered proprietor of both North Wanga/Koyonzo/2691 and North Wanga/Koyonzo/2692. Material on record shows that the second defendant became the registered proprietor on 10th September 2012 while the third defendant became the registered proprietor on 31st January 2014.
15. In their capacities as registered proprietors of land, the second and third defendants are entitled to the rights, privileges, and benefits under Section 24 of the *Land Registration Act*. Additionally, Section 26 of the Act obligates the court to accept their certificates of title as conclusive evidence of proprietorship, unless the provisos under Section 26 (1) (a) or (b) are established. The import of the foregoing is that grounds on which a title can be nullified are fraud or misrepresentation to which the registered proprietor is proved to be a party or where it is shown that the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
16. The plaintiff has challenged both the deceased's and the second and third defendants' titles on allegations of fraud. It is plain enough that fraud is a serious allegation and that the party alleging it must plead it, particularise it, and strictly prove it to a standard higher than the usual one in civil cases of proof on a balance of probabilities but lower than the criminal law standard of proof beyond reasonable doubt. See *Kuria Kiarie & 2 others v Sammy Magera* [2018] eKLR and *John Mbogua Getao v Simon Parkoyiet Mokare & 4 others* [2017] eKLR. In cases where fraud is alleged, it is not enough to simply infer fraud from the facts. See *Kinyanjui Kamau v George Kamau Njoroge* [2015] eKLR.
17. The pillars on which the plaintiff has erected his case on fraud are found in the particulars of fraud at paragraph 5 of the plaint. I can do no better than to let the pleaded particulars speak for themselves:
 - a. The deceased Honourious John Wanguche hoodwinked the Plaintiff that he was leasing two and a half acres out of his L.R. No. North Wanga/Koyonzo/1033 at a consideration of kes. 20,000/= but took advantage of the Plaintiff's illiteracy and duped him to execute a sale agreement dated 18/05/1987.
 - b. The deceased Honorious John Wanguche cunningly ushered the Plaintiff before the District Magistrate's court at Mumias to give him consideration for his leased parcel of land L.R. No. North Wanga/Koyonzo/1033 but instead knowing the plaintiff to be illiterate made him execute a land sale agreement dated 18/05/1987 and transfer forms.
 - c. The deceased Honorious John Wanguche cheated the Plaintiff that he only executed a land leased agreement dated 18/05/1987 when in actual sense the Plaintiff effected the transfer of L.R. No. North Wanga/Koyonzo/1033 to the deceased herein.
 - d. The deceased Honorious John Wanguche obtained a forged title deed for L.R. No. North Wanga/Koyonzo/1033 as the Plaintiff never surrendered the said title deed, nor appear before the relevant land control board to effect its transfer to the deceased Honorious John Wanguche.
 - e. The deceased Honorious John Wanguche corruptly designed crafty methods to take away the Plaintiff's land.
18. The plaintiff projected himself in the above particulars of fraud as an illiterate person who was misled. It emerged however that he went through primary school education up to standard seven and even sat for CPE. Further from the image of a helpless and vulnerable person who claims to have been ushered



into a magistrate's chamber to sign a sale agreement without knowing what it was, the plaintiff is far from being vulnerable. He is modestly educated and is an Imam at a mosque. In his own words, he can read and write Kiswahili and Arabic. Since he sat for CPE, my own assessment is that he can also read and write English. As a religious leader, he needs to do a lot of soul searching on his misleading claims in the plaint that he is illiterate. He knew that he signed a sale agreement on 18th May 1987.

19. The plaintiff claimed at paragraph d of the particulars of fraud that he neither surrendered his title deed nor appeared before the Land Control Board to effect transfer to the deceased. I note however that he did not produce at the trial the original of his title deed that he claimed to be still holding. Nothing would have been easier than simply availing it for inspection by the court. Regarding his claims that he did not appear before the Land Control Board, the defendants gave a complete response by producing a copy of an application for consent of the Land Control Board which on the face of it was signed by both the plaintiff and the deceased on 11th January 1988 as well as minutes of Mumias Divisional Land Control Board meeting held on 12th January 1988 which show that the board considered the application for transfer of the suit property from the plaintiff to the deceased and allowed it under Min. 27/88 – LCR No. 26/88.
20. Further, the defendants produced a copy of transfer form for transfer of the suit property from the plaintiff to the deceased. The form shows on the face of it that the plaintiff and the deceased signed it on 12th February 1988 and their signatures were attested. I find it highly improbable that the plaintiff would have been misled on 18th May 1987 when the sale agreement was signed and again nine months later on 12th February 1988. The transfer was registered in favour of the deceased on 6th May 1988. Even after the deceased became registered proprietor on 6th May 1988, the plaintiff did not take any action for over a decade during the deceased's lifetime. He only commenced proceedings long after the deceased had passed away. His extended inaction can only be taken to mean that he was reluctant to face the deceased with the claims of fraud.
21. In view of the foregoing discourse, I find that the plaintiff has failed to establish his allegations of fraud. That being so, he is not entitled to the reliefs that he seeks.
22. I find no merit in the plaintiff's case. Consequently, I dismiss it with costs to the defendants.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 31ST DAY OF JANUARY 2024.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Ojuro holding brief for Mr Luchivya for the Plaintiff

Mr Isiaho holding brief for Mr J Mukavale for the Defendants

Court Assistant: E. Juma

