



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

E.L.C. CASE NO. 602 OF 2010

KENNETH KIMANI NDUNGU.....1ST PLAINTIFF

FLORENCE WAITHERA NDUNGU SUING FOR

AND ON BEHALF OF THE ESTATE OF

FRANCIS NDUNGU KIMANI.....2ND PLAINTIFF

VERSUS

UPSTATE INVESTMENT LIMITED.....1ST DEFENDANT

REGISTRAR OF TITLES.....2ND DEFENDANT

THE HON. ATTORNEY GENERAL.....3RD DEFENDANT

JUDGEMENT

1. The Plaintiff's claim is that on or about the 29/10/2008, the 2nd Defendant colluded with the 1st Defendant and transferred L.R. No. 133330/389 to the 1st Defendant without the consent of Francis Ndungu Kimani, the registered proprietor. The Plaintiffs seek a declaration that the Estate of Francis Ndungu Kimani (deceased) is the registered owner of the suit land. They also seek a permanent injunction to restrain the 1st Defendant from selling, transferring, constructing or in any way dealing with the suit land.

2. In its defence filed on 13/4/2011, the 1st Defendant denied the Plaintiff's claim and averred that it was the lawful owner of the Suit Property. The 2nd and 3rd Defendants also denied the Plaintiff's claim and averred that if the 2nd Defendant transferred the Suit Property, then it was done legally.

3. The 2nd Plaintiff gave evidence in the case. She stated that her late father learnt in June 2009 that a stranger had commenced construction on his plot. On conducting a search, it emerged that a fraudster by the name Anthony Njoroge Ciera alias Francis Ndungu Kimani had purported to transfer the Suit Property to the 1st Defendant. During cross examination, she stated that she was not aware that the transfer to the 1st Defendant had been cancelled.

4. Edwin Munoko Wafula, a lands officer gave evidence for the 2nd and 3rd Defendants. He stated that the transfer of the Suit Property to the 1st Defendant was done lawfully and in good faith. Upon being notified by the Plaintiff of the fraudulent transfer, the Land Registrar proceeded to cancel the transfer to avert registration of any dealings on the land. He maintained that the lands officers exercised due diligence and that the Plaintiffs' claim for damages should be directed at the advocates who registered the transaction. He produced a copy of the original certificate of title kept at the lands office on which entries are normally made which confirmed that the transfer to the 1st Defendant registered on 29/10/2008 had been cancelled.

5. That being the case, there is no issue for determination. The suit is dismissed. Each party will bear its own costs.

Dated and delivered at Nairobi this 30th day of August 2018.

K. BOR

JUDGE

In the presence of: -

Mr. J.N. Maina holding brief for Mr. Wachira for the Plaintiff

Mr. Kamau for the 2nd and 3rd Defendants

Mr. V. Owuor- Court

No appearance for the 1st Defendant