



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 181 OF 2017**

**BENJAMIN MUOKA VENGL.....PLAINTIFF**

**VERSUS**

**MUTUA NYONYWE MBEVE.....1<sup>ST</sup> DEFENDANT**

**WAWIRA SUSAN PERIS.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. This suit was commenced by way of a Plaint dated 4<sup>th</sup> April, 2013. In the Plaint, the Plaintiff averred that in the year 2002, the 1<sup>st</sup> Defendant sold to the Plaintiff parcel of land known as Machakos Town Block 3/351 measuring approximately 2.04 acres; that the consent of the Land Control Board for the transfer of the suit land was granted and that the Defendant signed all the required completion documents.

2. It is the Plaintiff's case that the original Title Deed of the suit land mysteriously disappeared from his residence around the same time when his now estranged wife left his house in the year 2008 and that he later discovered that the 1<sup>st</sup> Defendant had fraudulently transferred the suit land to the 2<sup>nd</sup> Defendant. The Plaintiff is seeking for a declaratory order that the transfer of the suit land to the 2<sup>nd</sup> Defendant was fraudulent, and unlawful; an amendment, rectification and cancellation of the register of the suit land to remove the name of the 2<sup>nd</sup> Defendant and replace it with his name and an order of permanent injunction restraining the Defendants from trespassing or transferring the suit property.

3. In his Defence, the 1<sup>st</sup> Defendant deponed that he was not privy to the failure by the Plaintiff to register the transfer documents or the alleged disappearing of the original Title Deed and that he never transferred the suit property to the 2<sup>nd</sup> Defendant.

4. Although the 2<sup>nd</sup> Defendant was served by way of substituted service, she neither entered appearance nor filed a Defence. The hearing proceeded in the absence of both Defendants.

5. The Plaintiff informed the court that the 1<sup>st</sup> Defendant sold to him the suit property and that the 1<sup>st</sup> Defendant signed all the completion documents in respect to the suit land and obtained the Land Control Board consent for the transfer of the suit land to him. Although the 1<sup>st</sup> Defendant handed to him the original Title Deed, the Plaintiff informed the court that he realised that the same was missing when he presented the completion documents for registration.

6. However, he later discovered that the 2<sup>nd</sup> Defendant, who is his estranged wife, had been registered as the proprietor of the suit land.

7. PW1 stated that the 2<sup>nd</sup> Defendant carried away all the documents in respect to the suit land, including the Sale Agreement and the original Title Deed. The Plaintiff produced in evidence the consent of the Board and the transfer document which was duly executed and witnessed by an advocate. PW1 also produced the extract of the register of the suit land which shows that the land is currently registered in favour of the 2<sup>nd</sup> Defendant.

8. PW2 informed the court that he witnessed the signing of the Agreement between the Plaintiff and the 1<sup>st</sup> Defendant in respect of the suit land; that the land was vacant when the Plaintiff purchased it and that after buying the land, the Plaintiff built two permanent houses.

9. The Plaintiff's advocate filed submissions in which he reiterated the evidence of PW1 and PW2; that the 1<sup>st</sup> Defendant denied ever transferring the suit land to the 1<sup>st</sup> Defendant and that the 2<sup>nd</sup> Defendant has not controverted the Plaintiff's evidence.

10. The evidence before me shows that parcel of land known as Machakos Town Block 3/351 was registered in favour of the 1<sup>st</sup> Defendant on 23<sup>rd</sup> May, 1997. The extract of the register shows that on 24<sup>th</sup> June, 2008, the Plaintiff registered a caution on the said land. This caution

was removed by the Registrar of Land on 31<sup>st</sup> March, 2011 culminating in the registration of the land in favour of the 2<sup>nd</sup> Defendant on 18<sup>th</sup> May, 2011.

11. The evidence by PW1 and PW2 is that the Plaintiff purchased the suit land from the 1<sup>st</sup> Defendant and that the 1<sup>st</sup> Defendant signed all the completion documents in favour of the Plaintiff. The 1<sup>st</sup> Defendant also obtained the consent of the Land Control Board to transfer the land to the Plaintiff and gave to the Plaintiff the original Title Deed. However, the said original Title Deed and the other completion documents disappeared from the Plaintiff's house when his estranged wife, the 2<sup>nd</sup> Defendant left.

12. The 1<sup>st</sup> Defendant denied in his Statement of Defence of having transferred the suit land to the 2<sup>nd</sup> Defendant. On the other hand, the 2<sup>nd</sup> Defendant did not deny that she had the suit land fraudulently registered in her name.

13. In view of the evidence before me, I am satisfied that the 2<sup>nd</sup> Defendant fraudulently had the suit land registered in her name after leaving her matrimonial home. Indeed, having taken possession of the original Title Deed and other completion documents, it was not difficult for the 2<sup>nd</sup> Defendant to present the said documents to the Land Registrar on the pretext that she had purchased the land.

14. Consequently, I find that the Plaintiff has proved his case on a balance of probabilities. I therefore allow the Plaint dated 4<sup>th</sup> April, 2013 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 19<sup>TH</sup> DAY OF OCTOBER, 2018.**

**O.A. ANGOTE**

**JUDGE**