



**REPUBLIC OF KENYA**

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

**ELC CIVIL SUIT NO. 420 OF 2012**

**SIMON NYORO NGUGI..... PLAINTIFF**

**VERSUS**

**JOHN BAPTISTA IRUNGU KARIUKI.....1ST DEFENDANT**

**JANE WAMBUI IRUNGU.....2ND DEFENDANT**

**T/A RUIRU STAR HIGH SCHOOL**

**JUDGMENT**

1. This is yet another of the many cases of parallel land parcel registers that keep emanating from the Thika Lands Registry. From the evidence presented in this suit, two parallel land registers exist in respect of the suit property, Land Title Number **Ruiru East Block 1/T.586**. The said land is a subdivision surveyed out of a bigger parcel of land which previously belonged to Githunguri Constituency Ranching Company Limited. The plaintiff contends that his title was issued at the instance of Githunguri Constituency Ranching Company Limited pursuant to a transfer leading to a parcel register opened on 9/2/2004 in which the acreage of the land is given as 0.051 hectares and the registry sheet map is captured as number 2. The defendants claim that their title was issued pursuant to a transfer by one Joseph Maina Kimani Kanoe and the corresponding parallel register shows that it was opened on 8/4/2003 and the land measures 0.1000 hectares. This particular register does not contain the registry map sheet number.

2. The plaintiff's case was heard and concluded before Nyamweya J in 2015. The defendants' case was concluded before me in September 2018. None of the parties to the suit called the Thika Land Registrar as a witness.

3. Through a plaint dated 16/7/2012, the plaintiff contended that he acquired the suit property through purchase of shares in Githunguri Constituency Ranching Company Limited in 1990. In 2004, he was registered as proprietor of the suit property. In 2011, he realized that the defendants had trespassed onto the suit property and he confronted them. The defendants informed him that they held a title to the suit property, conveyed to them by one Joseph Maina Kimani Kanoe. He then lodged a complaint with the Criminal Investigation Department (the **CID**). Upon conclusion of investigations, the CID confirmed that the plaintiff's title was the legitimate title and advised him to move to court and reclaim the property.

4. Consequently, he brought this suit on 18/7/2012 seeking the following orders:

***i. A perpetual and permanent injunction restraining the defendants, their agents, servants employees and or assignees from further trespassing, destroying, claiming and or interfering with the plaintiff's property being plot number Ruiru East Block 1/T.586 in any manner inconsistent with the plaintiffs right of possession.***

***ii. A declaration that the plaintiff is the legal proprietor of property being plot number Ruiru East Block 1/T.586 and the defendants have no power or right to interfere with his peaceful and/or quiet possession of the same.***

***iii. General and exemplary damages for trespass, malicious and unconstitutional deprivation of property.***

***iv. Costs of the suit.***

5. On 13/2/2014, the defendants filed a statement of defence in which they contended that they purchased the suit property from Joseph Maina Kimani Kanoe in October 2004 and were issued with a title deed pursuant to a transfer executed by the said Joseph Maina Kimani Kanoe. They urged the court to dismiss the plaintiff's suit.

6. At the hearing, the plaintiff reiterated his case as summarized above and produced: (i) copy of his title; (ii) letter from Githunguri Constituency Ranching Company Limited dated 20/12/2011; (iii) the two parallel registers: (iv) receipt for survey fee of Kshs 10,000; (v)

letter dated 5/3/2012 from the District Survey Office to the Divisional CID Headquarters; and (vi) letter dated 6/7/2012 from CID Office to the plaintiff.

7. The defendants led evidence by the 1st defendant, John Baptista Irungu Kariuki. He reiterated that they bought the suit property from Joseph Maina Kimani Kanoe. He produced: (i) their title; (ii) sale agreement dated 28/10/2004; (iii) official search dated 25/10/2004; and (iv) copy of register in respect of their title.

8. In written submissions dated 6/8/2018, Mr Laichena, counsel for the plaintiff argued that the two parallel titles were subjected to investigations by Thika Lands Registry, Thika District Survey Office, Ruiru Police Station and Ruiru Divisional CID Office and it was established that the plaintiff's title was the genuine one. He added that Githunguri Constituency Ranching Company Limited had similarly confirmed that the plaintiff was the one who balloted for and was allotted the suit property. Counsel added that all the parties to this suit fully participated in the said investigations.

9. Regarding the name "**Simon Ngoro Ngugi**" which appears in the plaintiff's title, counsel submitted that the capture of "**Ngoro**" instead of "**Nyoro**" was typographical error because all the other details including the identity card number and the postal address tally with the plaintiff's bio-data.

10. Counsel submitted further that the register in respect of the defendant's title had two major discrepancies. First, it did not bear the registry map sheet number. Second, it bore the acreage as 0.1000 hectares whereas on the ground the suit property is 0.051 hectares.

11. On the plaintiff's plea for damages, counsel submitted that the plaintiff was the rightful owner of the suit property and the defendants had invaded and occupied the same without any justifiable cause hence the plaintiff was entitled to damages against the defendants. Counsel relied on the case of **Park Tower v Moses Chege & others (2014)eKLR**.

12. In written submissions dated 24/9/2018, Mr Ng'ang'a, counsel for the defendants submitted that the title conveyed to and held by the defendants was the first to be issued hence it ought to prevail. Counsel relied on the holding in **Gateway Investment Limited v Tajmal Limited & 3 others (2006)eKLR**.

13. Secondly, counsel submitted that the plaintiff's title and corresponding parallel register bears the middle name "**Ngoro**" and not "**Nyoro**" and contended that those are distinct and separate names relating to different persons. He argued that the plaintiff was not the "**Simon Ngoro Ngugi**" who appears in the parallel register.

14. Mr Ng'ang'a further submitted that the defendants were purchasers for valuable consideration and their title had been investigated and the defendants were not charged with any offence relating to fraud. Relying on **Wreck Motor Enterprises v Commission of Lands & 3 other**, counsel submitted that the defendants' title takes precedence over the plaintiff's title.

15. I have considered the parties' pleadings, evidence and submissions. I have also considered the relevant legal framework and jurisprudence. There is common ground that two parallel parcel registers exist in Thika Lands Registry in respect of the suit property. What is not clear is how that came to be. The key issue in this suit therefore, the question as to which of the two registers and resultant titles are valid. Our land registration system does not contemplate the existence of two parallel land parcel registers in respect of the same piece of land. The two parallel registers cannot both be legitimate. Only one would be legitimate and valid.

16. When a court of law is confronted with two parallel land parcel registers, it becomes inevitable to interrogate the history of the two parallel registers. This view is informed by the fact that a parcel register relating to a previously registered land is a product of a previous parcel register and is created as a product of a survey involving sub division of an existing registered parcel of land. The register is created pursuant to an instrument of conveyance by the previous registered proprietor. It is for this reason that the history of the suit property is key in unraveling the riddle relating to the parallel registers and titles being waved by the parties to this suit.

17. The plaintiff placed before court various pieces of documentary evidence. He produced a letter dated 20/12/2011 from Githunguri Constituency Ranching Company Limited to the Divisional Criminal Investigation Office in which the company stated thus:

***REF: C4569/D.C.I.0/03/12/12/11***

***20th December 2011***

***The District Criminal Investigating Officer***

***P. O. Box 2,***

***RUIRU.***

***RE: RUIRU EAST BLOCK 1 (GITUNGURI) T.586***

***Reference is made to your letter dated 3rd November 2011 and referenced CID/CRI/1/1/VOL.V/88/11.***

***This is to confirm that the above mentioned Plot was initially owned by Githunguri Constituency Ranching Company Limited but have (sic) since been balloted, allotted and is currently owned by NYORO SIMON NGUGI ID-3096034***

*According to our members register, the Plot has never been transferred to any other person.*

*Thanks in advance.*

*Yours faithfully*

**GITHUNGURI CONSTITUENCY RANCHING COMPANY LIMITED**

**John Maina Mburu**

**CHAIRMAN: for and on behalf of the Board of Directors**

18. Secondly, he produced a letter dated 5/3/2012 from the District Survey Office in which the District Surveyor stated as follows:

**Ref: ACS/THK/POL.VOL.1/12**

**5th March, 2012**

**Divisional CID HQRS**

**Gatundu**

**P.O. Box 2,**

**RUIRU.**

**RE: SURVEYOR REPORT FOR RUIRU EAST/BLOCKT.586**

***In reference to your letter Ref CID/CRI/i/i/Vol. 1/203 of 19th June 2012 Surveyors from this office visited the above disputed plot and identified it on the ground.***

***The plot was found to be on sheet No 2 of Ruiru East Block 1 and the plot is number T.586. The plot measures approximately 15m by 34m it is approximately 0.051 hectares.(sic)***

***The plot is currently being used as a playing ground by Ruiru Star High School.***

***As for ownership the District Land Registrar is in a better position to comment.***

**S.N. Muriuki**

**For: DISTRICT SURVEYOR**

**THIKA**

19. Against the above background, the defendants are waving a parallel register and title whose history is not known. Secondly, the register and title do not bear the registry map sheet number of the suit property. Thirdly, the said register and title bear 0.1000 hectares as the acreage of the suit property. The District Surveyor visited the suit property and confirmed that the plot measures 0.051 hectares and not the 0.1000 hectares that appear in the defendants' title documents.

20. The defendants contend that they purchased the suit property from one Joseph Maina Kimani Kanoe. The said vendor was however not called as a witness to shed light on how he acquired the parcel which hitherto belonged to Githunguri Constituency Ranching Company and which he conveyed to the defendants. In the absence of his evidence, the defendants have no legitimate historical record to support the register and title they are waving. Githunguri Constituency Ranching Company confirmed that the plaintiff is the person who balloted for and was allotted the suit property.

21. It was contended that the plaintiff is not the "**Simon Ngoro Ngugi**" appearing in the parcel register and title. However, the letter from Githunguri Constituency Ranching Company and the parcel register bear the plaintiff's identity card number and postal address. In view of the fact that the rest of the entries tally with the plaintiff's key bio-data, I am persuaded that capture of the name "**Ngoro**" instead of "**Nyoro**" was a typographical error that does not affect the legitimacy of the plaintiff's title.

22. Consequently, my finding on the validity of the parallel parcel registers and titles is that the parcel register and title deed bearing the name of **Simon Ngoro Ngugi** are the valid register and title deed respectively. The parcel register bearing the defendants' names was fraudulently created in the name of Joseph Maina Kimani Kanoe and conveyed to the defendants. The said register together with the resultant title deed bearing the defendants' names are therefore invalid.

23. The plaintiff sought damages against the defendants. I have agonized over that plea against the background of the facts of this dispute. In

my view, the Thika Lands Registry played a key role in the illegitimate creation and maintenance of the illegal parallel register. They even issued a search on the basis of the illegal register. There is no evidence that the defendants were privy to the fraud. Consequently, it would not be appropriate to condemn the defendants to pay damages.

24. Lastly, the court has noted with concern the emerging trend where land registries maintain parallel registers and refer claimants to either the Criminal Investigation Department or the courts. As a legal requirement, no parcel of land is supposed to have more than one parcel register or title. It is therefore the primary responsibility of every land registry to ensure that only one register is maintained in respect of a parcel of land. Existence of a parallel register or title is *prima facie* indicator of possible fraud. The land registrar is empowered under Section 79(2) of the Land Registration Act to rectify the fraudulent register through closure. Where the appropriate measure calls for a court order, the land registrar ought to promptly move the court for grant of the order. To maintain parallel registers in respect of the same parcel of land is not only criminal but also an abdication of statutory duty on part of the land registrars.

25. In the same vein, the criminal investigation agencies should not allow any land fraudster to get away with land fraud. Where parallel land registers or titles are waved, the agencies should get to the bottom of their existence and bring to book the authors of the illegal registers and or titles. The view that existence of civil proceedings relating to parallel registers and titles is a basis for suspension of criminal processes is what is emboldening the criminals in the land fraud criminal enterprise. I do not know of any legal framework which bars the police against carrying out criminal investigations and preferring criminal charges in respect of fraudulent land registers and titles, whether or not civil proceedings subsist.

26. In light of the above findings, I make the following disposal orders:

***a) The plaintiff Simon Nyoro Ngugi is the legitimate proprietor of Land Title Number Ruiru East Block 1/T.586 and the defendants have no right to interfere with his peaceful and/or quiet possession of the land.***

***b) A permanent injunction is hereby issued restraining the defendants, their agents, servants, employees and assignees against trespassing on, destroying, or interfering with the suit property, Ruiru East Block 1/T.586.***

***c) Each party shall bear own costs of this suit.***

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14TH DAY OF NOVEMBER 2018.**

**B M EBOSO**

**JUDGE**

Mr Laichena Advocate for the Plaintiff

June Nafula - Court Clerk