



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 411 OF 2017

FORMERLY NAKURU ELC CAUSE NO. 185 OF 2012

KUYIAMO OLE MOSOMPE.....PLAINTIFF

-VERSUS-

KAIKAI OLE KARBOLO.....DEFENDANT

JUDGEMENT

By a Plaint dated 19th September, 2011 the Plaintiff filed the suit herein seeking an order of injunction to issue to restrain the Defendant by himself, servants, agents or anyone acting on his instructions from transferring, cultivating and in any manner whatsoever dealing with Land Parcel No. CIS MARA/LEMEK/384 and 3485, an order directing the Land Registrar Narok to cancel titles in the names of the Defendant and the issuance of new title in the Plaintiff's name plus damages and costs of the suit.

It is the Plaintiff's case that at all material time to the suit, he was the proprietor of all that parcel of land known as CIS MARA/OLOLULUNGA/657 measuring about 28.34hectares and was issued with title to the said land. The Plaintiff averred that sometime on 9th May, 2001 he entered into an agreement with the Defendant so as to purchase about 22 acres at a consideration of 10,000/- per acre which subsequent to the conclusion of the transaction, the 22 acres were to be exercised from the parcel of land. However, the Defendant fraudulently prepared a sale agreement for 75 acres which was more than what he agreed to sale. Upon signing of the sale agreement, the Plaintiff contends that he signed mutation forms so as to prepare new titles.

The Plaintiff further averred that he later found out that the land was sub-divided into 3 parcels with new numbers CIS MARA/LEMEK/2161 and title issued in the name of the Defendant which was 13.17 ha and later parcel No. CIS MARA/LEMEK/2162 was further sub divided into CIS MARA/LEMEK/3484 and 3485 measuring 7.97ha and 4.86ha respectively.

The Plaintiff further averred that on or about 21st October, 2010 the Defendant fraudulently obtained consent of the Land Control Board purporting that the application was signed by him and subsequently transferred land parcel No. CIS MARA/LEMEK/ 3484 and 3485 in his name.

Even though the Plaintiff was served with summons to enter appearance he never filed a defence to oppose the suit herein. The court having satisfied itself that there was proper service on the Defendant, the matter proceeded for hearing.

The Plaintiff testified on his own behalf and did not call any witness. It was his testimony that he had sold about 22 acres of land to the Defendant and his brother, however, the Defendant took 67 acres contrary to the agreement and because of their fraudulent they were charged at Narok Chief Magistrate's Court Criminal Case No. 86 of 2011.

In support of his case, the Plaintiff produced a copy of the sale agreement, consent forms, transfer forms and a report, a document examiner/finger print expert report where it was established that the transfer forms and application for Land Control Board consent were not thumb printed by the Plaintiff.

This being a case in which the Defendant never filed any defence and or challenged the evidence of the Plaintiff, I find that the Plaintiff has proved his case on a balance of probabilities and that the Defendant had fraudulently acquired the Plaintiff's land.

It is trite law that a party who obtains land fraudulently should not be allowed to legitimate the fraud. Plaintiff's evidence of fraud has not been controverted by the Defendant.

Under section 26 of Land Registration Act 2012 provides that a certificate of title issued by the Registrar shall be a prima facie evidence of title in except where the same was obtained by fraud or misrepresentation.

In the instant case it is evident that the Defendant's title was tainted with acts of fraud.

The totality of the analysis above and the evidence before me, I find that the Plaintiff has proved his case on a balance of probability and I therefore make the following orders:-

1. A permanent injunction do issue restraining the Defendant by himself, agents or anyone acting on his instructions from entering, constructing or cultivating on LR NO. CIS MARA/LEMEK/3484 and 3485.
1. The Title deed issued in respect of LR NO. CIS MARA/LEMEK/3484 and 3485 in favour of the Defendant are hereby declared null and void.
2. An order do issue to the Registrar to cancel title to LR NO. CIS MARA/LEMEK/3484 and 3485 in the name of the Defendant and instead reissue the title in the Plaintiff's name.
3. Costs of the suit to the Plaintiff.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **20th** day of **December, 2018**

Mohammed Noor Kullow

Judge

20/12/18

In the presence of:-

CA:Chuma

Mr. Kambo holding brief for Ogutu for the Plaintiff

Mr Masikonde holding brief for Maritim for the Defendant

Mohammed Noor Kullow

Judge

20/12/18