

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 496 OF 2013

TERESIA WAMBUI NGIGE.....

PLAINTIFF

VERSUS

JOSEPH MWANGI KAMBURI.....

....DEFENDANT

JUDGMENT

Teresia Wambui Ngige, (hereinafter referred to as the plaintiff) has sued *Joseph Mwangi Kamburi (hereinafter referred to as the defendant)* claiming that she is the *bonafide* proprietor/allottee/lessor from the Municipal Council of Eldoret of all that parcel of land measuring 0.10 ha or thereabouts for a term of 99 years with effect from 1.12.1993 and known as Eldoret Municipality Block 9/2364. (Provisional Number ELD/PDP/17/93/48/RESIDENTIAL/SUB-PLOT NO. 71(hereinafter referred to as the suit property). That on or about 31st July 2013, the plaintiff while applying to be issued with a certificate of title in respect of the suit property was surprised to find a subsisting entry in the Lands Registry in favour of Joseph Mwangi Kamburi, the defendant herein. That upon further enquiries, a search conducted in the Lands Registry revealed that a certificate of lease was issued on the 29th June, 2012 in favour of the defendant. The plaintiff contends that the actions of the defendant of grabbing the plaintiff's land were done without consultation, without due regard to the rights of the plaintiff and/or any persons claiming under her. The plaintiffs further contend that the said actions by the defendants are illegal, fraudulent, null and void.

Particulars of fraud, illegality and/or nullity are that ; The registration of the defendant as the owner of the plaintiff's land was fraudulent; The suit land herein has never been allocated nor transferred to the defendant; The defendant's registration of the suit property was both mischievous and fraudulent and only meant to defeat the due process of the law; Misrepresenting to the Lands official to issue a lease where none ought to have issued; The registration of the land in favour of the defendant was done without following the due process precedent to the issuance of a certificate of lease; Presenting a forged/fake lease purportedly executed by the Municipal Council of Eldoret thereby misrepresenting to the officials at the Uasin Gishu Lands Registry to issue him with a certificate of lease where none should have issued; The registration of the defendant as the proprietor of the suit was obtained through unprocedural, fraudulent/illegal/corrupt scheme.

That as a result of the defendant's acts to wit the fraudulent acquisition of the certificate of lease over that parcel of land known as Eldoret Municipality block 9/2364 measuring 0.1 Ha or thereabouts, the plaintiff has been unable to acquire a certificate of lease over the suit land and has therefore suffered loss and damage. The defendant is now claiming ownership and has threatened to enter upon the suit land, evict the plaintiff yet the plaintiff is the rightful owners thereof.

The plaintiff's claim against the defendant is for a declaration that the purported registration and subsequent issuance of a certificate of Lease over land parcel No. Eldoret Municipality Block 9/2364 in favour of the defendant was illegal, null and void. The plaintiffs pray that the Certificate of Lease issued in favour of the defendant over land parcel No. Eldoret Municipality Block 9/2364 be cancelled. The plaintiff also prays for an order of permanent injunction to restrain the defendant, his servants and/or agents from interfering with the plaintiff's use and possession and or otherwise dealing with land parcel No. Eldoret Municipality Block 9/2364 and an order requiring the district Land Registrar, Uasin Gishu

District to issue a proper title over that parcel of land known as Eldoret Municipality Block 9/2364 in favour of Teresia Wambui Ngige, the plaintiff herein.

The defendant was served with summons to enter appearance but failed to enter appearance and or defence. The matter proceeded on 9.2.2017 where the plaintiff stated that she is a businessman in this town. She stays in East Indies and knows Samuel Ngige Gituro who was her late father. Succession in respect of the estate of her late father has already taken place being succession Cause No. 253 of 1999 at the High Court of Kenya at Eldoret and that the grant was confirmed on 5.4.2001. The plaintiff's name appears in the schedule of assets as Item No. 2. She was given all plots in Kapsoya area. These are Kapsoya/EL/Municipality Block 9/2364. She was getting all properties in Kapsoya. This property was acquired through purchase from Richard Kimaiyo Mutahi on 9.9.1996. The buyer was her late father. She produced the confirmation of grant as PEx.1. The agreement of sale is P.Ex2.

There was a letter of allotment dated 22.6.1994. The provisional plot number is PDP (ELD)/17/93/48. This was sub-plot No. 71. She produces the letter as PEx.3. Richard Kimutai applied for consent to transfer the plot No. 71 to her late father, Samuel Ngige Gituro. The council approved the transaction. There was a reply to the application. The application was approved. She produces the application as P.Ex4(a) and produces the consent as PEx.4(b). she has been paying rents and rates. On 4.11.2013, she paid rates. She produces the receipts as PEx.5(a), 5(b), 5(c).

She went to inspect her plot and found someone had fenced the land. She reported the matter to the police station. She informed the Town Council that the plot is hers. She produced the letter to the Council as PEx.6. The Council advised her to do a Search and she did the same. She found that someone had obtained a title. She produced the certificate of official Search as P.Ex.7. The owner is indicated as one Joseph Mwangi Kamburi. There has been no development on the site. The council has indicated that the property belongs to her. She produces letter dated 2.8.2012 as PEx.8. They registered the piece of land. She prays for judgment and the title. The land to allocated to her. She prays for costs.

I have considered the evidence on record and do find that the plaintiff has proved on a balance of probability that she was scheduled to be gifted with all plots in respect of the Estate of Samuel Ngige Gituro as per the Certificate of Confirmation of grant issued to Peter Gicharu Ngige. I do find that the plaintiff is entitled to be registered as proprietor of Eldoret Municipality Block P/2364.

I do grant judgment to the plaintiff, thus a ***declaration*** that the purported registration and subsequent issuance of a certificate of Lease over land parcel No. Eldoret Municipality Block 9/2364 in favour of the defendant was illegal, null and void. The Certificate of Lease issued in favour of the defendant over land parcel No. Eldoret Municipality Block 9/2364 is hereby ***cancelled***. An order of ***permanent injunction*** is hereby issued to restrain the defendant, his servants and/or agents from interfering with the plaintiff's use and possession and or otherwise dealing with land parcel No. Eldoret Municipality Block 9/2364 . The district Land Registrar, Uasin Gishu District is hereby ordered to issue a proper title over that parcel of land known as Eldoret Municipality Block 9/2364 in favour of Teresia Wambui Ngige, the plaintiff herein. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 24TH DAY OF FEBRUARY, 2017.

ANTONY OMBWAYO

JUDGE