



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC CASE NO. 80 OF 2014

PETER NJOROGEPLAINTIFF

VERSUS

JOSEPH KAMAU NDEGWA1ST DEFENDANT

STANLEY KAMANDE NJOROGE2ND DEFENDANT

LAND REGISTRAR KAJIADO COUNTY3RD DEFENDANT

NATIONAL LAND COMMISSION4TH DEFENDANT

JUDGMENT

1. This suit was commenced by way of a Plaint dated 30th July, 2014.
2. In the Plaint, the Plaintiff averred that he is the registered proprietor of parcel of land known as Kajiado/Kisaju/515 measuring 4.04Ha; that he purchased the land from Jeremiah Tenik Kirote Rombo after it was hived from land known as Kajiado/Kisaju/60 and that a Title Deed was issued to him on 25th May, 1987.
3. The Plaintiff has averred that on 22nd August, 2006, he sold 5 acres out of the suit property to the 1st Defendant; that he handed to the 1st Defendant the original Title Deed to facilitate the sub-division of the land and that when the 1st Defendant failed to observe the conditions of sale, the 1st Defendant sued him in HCCC NO. 18 of 2008 and that the 1st Defendant was ordered to return the original Title Deed to him.
4. The Plaintiff's claim is that although the 1st Defendant returned to him the original Title Deed, it transpired that the suit property had been transferred to the 2nd Defendant on 25th May, 1987. The Plaintiff is seeking for the nullification of the Title Deed that was issued to the 2nd Defendant.
5. The 1st Defendant filed a Defence in which he averred that he returned to the Plaintiff the original Title Deed; that if as at 30th January, 1987 the land was in the name of the 2nd Defendant, then the Plaintiff did not have a Title Deed in 1986 and that the land had two Title Deeds.
6. Although the 2nd, 3rd and 4th Defendants were served with Summons to Enter Appearance, they did not enter appearance or file Defences.
7. The matter proceeded for hearing on 1st September, 2016 when only the Plaintiff testified.

8. The Plaintiff, PW1, informed the court that he is the registered proprietor of land reference number Kajiado/Kisaju/515; that he offered to the 1st Defendant five (5) acres of the suit land and that when the transaction fell through, the 1st Defendant was directed by the court to return to him the original Title Deed.

9. It was the evidence of PW1 that although he was in possession of the original Title Deed, he discovered that the same land had been registered in favour of the 2nd Defendant. PW1 wants the register to be rectified to reflect his name.

10. The Plaintiff's advocate deponed that the Plaintiff has never executed the transfer documents in favour of the 2nd Defendant; that the transfer of the suit property in favour of the 2nd Defendant was done fraudulently and that the Plaintiff's claim is undefended.

11. The documents produced in evidence by PW1 shows that the Title Deed for parcel of land known as Kajiado/Kisaju/60 was issued to one Jeremiah Kirote on 17th September, 1982.

12. The evidence further shows that the Plaintiff herein purchased a portion of the said land and after obtaining the consent of Purka Land Control Board, a Title Deed for Kajiado/Kisaju/515 was issued to him.

13. According to the search that was produced by PW1, the suit property was registered in his favour on 25th May, 1987.

14. PW1 produced in evidence a green card for the suit property which shows that he transferred to the 2nd Defendant the suit property on 25th May, 1987. PW1 denied that he transferred the suit property to the 2nd Defendant.

15. Considering that the 2nd Defendant neither filed a Defence nor tendered evidence in this matter, the Plaintiffs assertion that he has never transferred the suit property to the 2nd Defendant goes unchallenged.

16. Indeed, in view of the fact that the Plaintiff is still in possession of the original Title deed, the purported transfer of the suit property to the 2nd Defendant can only amount to a fraudulent transaction.

17. In the circumstances, I find that the Plaintiff has established his claim on a balance of probabilities.

18. For those reasons, I allow the Plaintiff's claim in the following terms:

a. A declaration be and is hereby issued that the Plaintiff is the legal owner of parcel of land known as Kajiado/Kisaju/515 measuring 4.04Ha.

b. An order of rectification of the register for parcel of land known as Kajiado/Kisaju/515 be and is hereby issued directing the Kajiado District Land Registrar to cancel the name of the 2nd Defendant and replace the same with the Plaintiff's name forthwith.

c. The Title Deed for parcel of land known as Kajiado/Kisaju/515 purportedly issued to the 2nd Defendant is hereby declared null and void.

d. The 2nd Defendant to pay the costs of the suit.

DATED AND DELIVERED AT MACHAKOS THIS 3RD DAY OF MARCH, 2017.

OSCAR A. ANGOTE

JUDGE