



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.19 OF 2015

ERASTUS OMONDI OKUL.....PLAINTIFF

VERSUS

GEORGE MWANGI WAIGWA1ST DEFENDANT

THE DISTRICT LAND REGISTRAR.....2ND DEFENDANT

THE NATIONAL LAND COMMISSION.....3RD DEFENDANT

JUDGMENT

1. **Erastus Amondi Okul**, the Plaintiff, filed this suit through the plaint dated 12th January 2015 against **George Mwangi Waigwa, District Land Registrar Kisumu, and National Land Commission**, the 1st to 3rd Defendants respectively, seeking for the following;

“(a) An order restraining the 1st Defendant from selling, leasing, charging or in any way dealing with the suit parcel of land **Kisumu/Kanyakwar B/245**.

b) An order directing the 2nd Defendant to rectify the register by cancelling the name of the 1st Defendant as the proprietor of the suit parcel title No. **Kisumu/Kanyakwar B/245**.

c) Damages

d) Costs of this suit and interest.”

The Plaintiff avers that he purchased the said land from **Leslie Nelly Dualson Okudo** in July 2009, and after obtaining the land control board consent, the land was transferred to his name and title deed issued on the 7th September 2009. That he took possession of the land and has been in possession since. That later he learned that the 1st Defendant had fraudulently transferred the land to his name in collusion with the 2nd Defendant and hence this suit.

2. The 1st Defendant did not enter appearance or file defence though served as confirmed through the affidavit of service sworn by Bruce O. Odeny on the 4th February 2015.

3. The 2nd and 3rd Defendants opposed the Plaintiffs claim through their statement of defence dated 17th November 2015, denying the particulars of fraud and averring that the prayers sought cannot be issued.

4. The hearing took place on the 7th September 2016 when the Plaintiff testified as PW1. He told the court how he bought land parcel **East Kisumu/Kanyakwar B/245** from one Leslie Oludo. He produced copies of the land control board consent, transfer form, title deed, and certificate of official search in respect of the said land as exhibits. PW1 said the land was vacant when he bought it and that he took possession immediately. That later in year 2013 he learnt that one **George Waigwa Mwangi**, the 1st Defendant, had fraudulently transferred the land to his name. PW1 testified that he was summoned to the Land Registrar's office and he presented the documents through which he had acquired the land. That the Land Registrar then advised that he seeks for court order. He produced a copy of the green card for the land, and the Land Registrar's letter dated 14th August 2014 as exhibits. The Plaintiff then filed this suit and, seeks that the 1st Defendant's name be cancelled and land be returned to his name.

5. The court fixed the defence hearing on 16th January 2017, but the Defendants and their counsel did not attend. The defence case was therefore marked closed and date for judgment fixed.

6. The following are the issues for the court's determinations;

- a) Whether the plaintiff's registration with the suit land was regular, lawful and procedurally done.
- b) Whether the Plaintiff transferred the land to the 1st Defendant or put conversely, whether the 1st Defendant registration with the suit land was regularly, lawfully and procedurally done.
- c) What orders to issue.
- d) Who pays the costs.

7. The court has considered the pleadings filed, evidence tendered by the Plaintiff and come to the following determinations;

a) That going by the testimony of the Plaintiff and on perusing the copy of letter of consent dated 29th July 2009, payment voucher for transfer and pay in slip for stamp duty, both dated 4th September 2009, transfer of land form registered on 7th September 2009, receipt dated 4th September 2009 for registration and title deed, the court find and hold that the Plaintiff registration as proprietor of land parcel **East Kisumu/Kanyakwar B/245** was regularly, lawfully and procedurally done.

b) That the copy of the green card for the said land issued on 14th August 2016 and produced as exhibit 8 indicates that one **George Mwangi Waigwa**, the 1st Defendant, got registered as proprietor of the said land on 11th December 2009 under entry number 7 and title deed issued under entry No.8. That the title of the 1st Defendant has been challenged by the Plaintiff through this suit. The 1st Defendant, though served has not defended the proceedings. That the court notes that the green card does not indicate how the 1st Defendant obtained registration with the land under the column headed "**consideration and remarks.**"

c) That the 2nd Defendant has also not availed any evidence to justify the registration of the 1st Defendant as proprietor. That had there been documents under which the 1st Defendant obtained registration in the Land Registrar's custody, then disclosure would have been made in their letter dated 14th August 2014 or availed in court through filing of list of documents.

d) That the findings in (b) and (c) above, leads the court to find and hold that the registration of the 1st Defendant as proprietor of the suit land was done fraudulently and in collusion between 1st and 2nd Defendants. That the 1st Defendant's registration having been obtained irregularly, unlawfully and unprocedurally, the same is hereby impugned in accordance with **Section 26 of the Land Registration Act No.3 of 2012** and cancelled.

8. That flowing from above, the court finds that the Plaintiff has proved his case on a balance of probabilities and judgment is entered in his favour and against the Defendants in terms of prayer (b) and (d) of the plaint dated 12th January 2015.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 12TH DAY OF APRIL 2017

In presence of;

Plaintiff Present

Defendants Absent

Counsel Mr. Odeny for the Plaintiff

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

12/4/2017

12/4/2017

S.M. Kibunja Judge

Oyugi court Assistant

Plaintiff present

Mr Odeny for the Plaintiff

Court: Judgment dated and delivered in open court in presence of the Plaintiff and his counsel Mr. Odeny.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

12/4/2017