



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

HCC CASE NO. 518 OF 2013

MICHAEL GICHIRA NJERU..... PLAINTIFF

VERSUS

SAMUEL MAGU MUGO 1ST DEFENDANT

JOHN WANJOHI MWANGI MUGO 2ND DEFENDANT

MONICA NYAMBURA MUCERU 3RD DEFENDANT

JUDGMENT

By his plaint filed herein on 27th February 2012, the plaintiff sought judgment against the three (3) defendants in the following terms:

- 1. That this Court issues an injunction to prohibit the defendants from dealing in any way, shape or form with land parcel No. L.R. INOI/KIAMBURI/271 the suit property and its sub-division until this suit is heard and settled.***
- 2. Rectification of the land register and cancellation of the titles to the suit property registered in the defendant's names.***
- 3. Costs of the suit.***
- 4. Interest on (b) above.***
- 5. Any further relief this Honourable Court may deem fit to grant.***

The plaintiffs claim was premised on pleadings that land parcel No. INOI/KIAMBURI/271 (the suit property herein) was at all material times registered in the names of his late father **NJERU MAGO** who died in 1966. However, a stranger posing as his late father mischievously obtained Court orders and had the suit property fraudulently transferred to the 1st defendant who in turn transferred it to the 2nd defendant who in turn transferred it to the 3rd defendant who has now sub-divided it with the intention of selling it to unsuspecting buyers hence this suit.

The 1st and 2nd defendants filed a joint defence denying the plaintiff's averments adding that they sold the suit property to the 3rd defendant free from any encumbrances. They added further that this suit is res-judicata and therefore an abuse of the process of the Court and a Preliminary Objection would be raised at the appropriate time.

The 3rd defendant filed a defence and counter claim to the plaintiff's suit. She pleaded that she is a bona fide purchaser of the suit property and the resultant sub-divisions and the plaintiff is a trespasser thereon. She also pleaded res-judicata as the claims involving the plaintiff and the 1st and 2nd defendants had been determined in other suits. By way of counter-claim, the 3rd defendant pleaded that she purchased the suit property free of any encumbrances and has since sub-divided it into seven (7) portions namely INOI/KIAMBURI/1158, 1159, 1160, 1161, 1162, 1163 and 1164. That the plaintiff (defendant in the counter-claim) is trespassing upon land parcel No. INOI/KIAMBURI/1161 thus interfering with the defendant's (plaintiff in the counter claim) proprietary rights over the same. The defendant therefore prayed for judgment against the plaintiff as per her counter-claim in the following terms:

(a) That the defendant in the counter claim (plaintiff in the original claim), members of his family, servants, agents or anybody acting under his instructions do remove themselves and their properties from land parcel No. INOI/KIAMBURI/116 within 30 days after judgment and in default, the defendant in the counter claim, members of his family and his properties be forcefully evicted from land parcel No. INOI/KIAMBURI/116 within 60 days after the date of judgment.

(b) That the defendant in the counter claim (plaintiff in the original claim), members of his family and/or his agents be permanently restrained from entering upon, occupying and/or utilizing land parcel No. INOI/KIAMBURI/1161 or in any way interfering with the exercise of the proprietary rights of the plaintiff in the counter claim over the suit land.

(c) Costs of the suit.

The plaintiff did not file any reply to the 3rd defendant's defence or a defence to the 3rd defendant's counter claim.

By a ruling dated 24th February 2014, this Court dismissed the plaintiff's suit for being res-judicata. This judgment is therefore only in respect to the 3rd defendant's counter claim against the plaintiff.

In support of her counter claim, the 3rd defendant testified that in August 2011, she and her late husband purchased the suit property from the 2nd defendant **JOHN WANJOHI MWANGI MUGO** having conducted the necessary search. The necessary Land Control Board's consent was obtained and the plaintiff who had a crop of maize on the suit property sought time to harvest it but even after he had done so, the plaintiff and his family prevented the 3rd defendant from ploughing it. The plaintiff and his family still occupy parcel No. INOI/KIAMBURI/1161 which is one of the resultant sub-divisions after the 3rd defendant had sub-divided the suit property into seven (7) portions. That gave rise to this suit.

At the end of the trial, it was agreed by counsel for both parties that submissions be filed and exchanged and the case be further mentioned to confirm compliance. However, by 14th March 2017, only the 3rd defendant's counsel had filed submissions and the plaintiff who was present sought more time as his advocate was engaged in the Court of Appeal at Nyeri. He was given upto 4th April 2017 to do so. By 4th April 2017, no submissions had been filed by counsel for the plaintiff and judgment was set for 19th May 2017 and later 16th June 2017. I therefore have not had the advantage of the plaintiff's submissions.

I have considered the 3rd defendant's counter claim and her oral and documentary evidence. As no reply was filed to the 3rd defendant's defence nor any defence to her counter claim, her evidence was not rebutted.

There is no doubt that the 3rd defendant is the registered proprietor of land parcel No. INOI/KIAMBURI/1158, 1159, 1160, 1161, 1162, 1163 and 1164 which are the resultant sub-divisions of land parcel No. INOI/KIAMBURI/271 which she and her late husband purchased from the 2nd defendant after conducting due diligence. Consent for the transaction was obtained from the Land Control Board and although the plaintiff who was in occupation of parcel No. INOI/KIAMBURI/1161 sought and was granted time to vacate, he did not do so and he and his family remain in possession of the same. As the registered proprietor of the suit property and all the resultant sub-divisions including parcel No.

INOI/KIAMBURI/1161 which the plaintiff continues to occupy, the 3rd defendant is entitled to all the rights and privileges that are appurtenant thereto and free from any encumbrances other than those noted on the register or such liabilities and interests that do not require to be noted on the register. Such rights and privileges include the rights to evict trespassers and there is no evidence that the plaintiff or his family have any rights to remain on land parcel No. INOI/KIAMBURI/1161 and no defence was filed to the 3rd defendant's counter claim seeking his eviction therefrom. The 3rd defendant's claim to land parcel No. INOI/KIAMBURI/1161 as correctly submitted by her counsel, finds full protection under both **Sections 24 and 25 of the Land Registration Act** which recognize the rights of a registered proprietor of land as well as **Article 40 of the Constitution** which guarantees every person's right to own property of any description in Kenya. I am satisfied from the evidence before me that the 3rd defendant (plaintiff in the counter claim) has proved her case against the plaintiff (defendant in the counter claim) and is therefore entitled to the prayers sought therein.

There shall be judgment for the 3rd defendant (plaintiff in the counter claim) against the plaintiff (defendant in the counter claim) as follows:

(a) That the defendant in the counter claim (plaintiff in the original claim), the members of his family, servants, agents, or anybody acting under his instructions do remove themselves and their properties from land parcel No. INOI/KIAMBURI/1161 within six (6) months from the date of this judgment and in default, the defendant in the counter claim, members of his family and his properties be evicted therefrom.

(b) That the defendant in the counter claim (plaintiff in the original claim), members of his family and/or his agents, after vacating or being evicted from land parcel No. INOI/KIAMBURI/1161, be permanently restrained from entering upon, occupying and/or utilizing land parcel No. INOI/KIAMBURI/1161 or in any way interfering with the exercise of the proprietary rights of the 3rd defendant (plaintiff in the original claim) over the said land.

(c) The defendant (plaintiff in the counter claim) is entitled to costs of the counter claim.

B. N. OLAO

JUDGE

16TH JUNE, 2017

Judgment delivered, dated and signed in open Court this 16th day of June 2017

Ms Njiru for Mr. Okwaro for 3rd Defendant present

Plaintiff present in person.

B. N. OLAO

JUDGE

16TH JUNE, 2017