



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO.193 OF 2011

TERESA B. WAITHIRA GATIBU.....1ST PLAINTIFF

KENNETH KIBOI KINGORI2ND PLAINTIFF

VERSUS

PETER NJAMBI NJOROGE.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

JUDGMENT

1. By a Plaint dated 1st August, 2011, the Plaintiffs are seeking for a declaratory relief that the 1st Plaintiff is the owner of Ngong/Ngong/35699 (*the suit land*). The 1st Plaintiff is also seeking for an order for transfer of the land to the 2nd Plaintiff plus costs and interest.
2. The Plaintiffs testified in support of the claim. The Defendants, though served, failed to enter appearance or file a Defence and thus the case was heard exparte.
3. The Plaintiffs' case is contained in the testimony tendered. The 2nd Plaintiff who testified first says that he purchased the suit land from the 1st Plaintiff in the year 2010. Before purchasing the land, he searched the land and confirmed it was owned by the 1st Plaintiff.
4. He paid the agreed price and was availed all the documents for the purpose of registration. However, the Registrar, Kajiado Land registry, rejected to oblige as he claimed that there was a Land Dispute's Tribunal of Kajiado and SRM CC 26/2001 Kajiado order prohibiting any dealings in the land. The 1st Plaintiff denied knowledge of such cases and orders.
5. The 1st Plaintiff supported the 2nd Plaintiff's case and adopted her witness statement. She agreed to have sold the suit land to the 2nd Plaintiff on 22nd September, 1997. According to the 1st Plaintiff, she bought Ngong/Ngong/20350 of which she sold a portion of it being Plot No. 35699 to the 2nd Plaintiff. The 1st Plaintiff stated that she was not aware of any order and that the alleged order was issued after she had obtained her title on 26th February, 1998.
6. After going through the Plaintiffs' pleadings, their testimony and submissions, I make the following findings:-

a) There is no dispute that the 1st Plaintiff was the owner of the suit land which she sold to the

2nd Plaintiff.

b) The alleged order of the Land Disputes Tribunal and SRMCC 26/2001 was issued after the 1st Plaintiff obtained her title in 1998. It also related to title No.5469 and not the suit land.

7. Section 26 of the Registered Land Act emphasizes the fact that a title is *prima facie* evidence of ownership and thus the registered proprietor is the absolute owner save where the same is impugned on grounds of fraud or illegality. In the instant case, such a challenge has not been raised.

8. The Plaintiff's right to own property is entrenched in Article 40 of the Constitution of Kenya. The said right has not been challenged under the exceptions therein.

9. In *Nairobi ELC No.51/2013 Oyaro & Others vs. Njoroge*, the court, faced with a similar scenario affecting part of the suit property held that the orders of Kajiado SRMCC.26/2001 and the Land Disputes Tribunal were inapplicable to the suit land as they were issued after the title to the Plaintiff had been issued and could not apply retrospectively.

10. The court thus holds that the Plaintiffs have proved their case on a balance of probabilities and thus make the following order:

a) Prayers (a) (b) and (c) of the Plaint dated 1st August, 2011 are granted.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 22ND DAY OF SEPTEMBER, 2017.

O. A. ANGOTE

JUDGE