



Kimani (Suing as the Administrator of the Estate of Gatigwa Gaitho) v Ndonga (Environment & Land Case 1298 of 2014) [2016] KEELC 1316 (KLR) (29 January 2016) (Judgment)

William Ngaara Kimani (Suing as the administrator of the estate of Gatigwa Gaitho) v Margaret Wahu Ndonga [2016] eKLR

Neutral citation: [2016] KEELC 1316 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1298 OF 2014
SO OKONG'O, J
JANUARY 29, 2016**

BETWEEN

WILLIAM NGAARA KIMANI PLAINTIFF

SUING AS THE ADMINISTRATOR OF THE ESTATE OF GATIGWA GAITHO

AND

MARGARET WAHU NDONGA DEFENDANT

JUDGMENT

1. The plaintiff brought this suit against the defendant on 7th October, 2014 seeking the following reliefs;
 - (i) An order cancelling the title for all that land parcel known as Ndumeri/Tinganga/T.532(hereinafter referred to as “the suit property”) in the name of the defendant and the restoration of the property in the name of Gatigwa Gaitho as the owner thereof.
 - (ii) Costs of the suit.
 - (iii) Any other or further relief the court may deem just and fit to grant.
2. The plaintiff brought the suit in his capacity as the administrator of the estate of Gaitgwa Gaitho, deceased(hereinafter referred to only as “the deceased”). In his plaint dated 6th October, 2014, the plaintiff averred that at all material times the suit property was registered in the name of the deceased as the owner thereof. The plaintiff averred that the defendant caused the suit property to be transferred into her name fraudulently using a confirmed grant of letters of administration that she obtained in Kiambu Senior Resident Magistrate’s Court Succession Cause No. 27 of 1989 in respect of the estate of one, Obadiah Ciira Wathina. The plaintiff averred that a demand has been made upon the defendant to



reverse the illegal and fraudulent transfer of the suit property to her or risk being sued but the defendant has neglected to heed the demand thereby making the filing of this suit inevitable.

3. The defendant was served with the summons to enter appearance but failed to do so within the prescribed time. The plaintiff applied for interlocutory judgment in default of appearance and the same was entered by the deputy registrar on 19th August, 2015. The suit was thereafter fixed for formal proof on 30th November, 2015 when the plaintiff gave evidence and closed his case without calling a witness. The plaintiff's attorney gave evidence on behalf of the plaintiff and called no witness. In his evidence, the plaintiff adopted the statement that he filed together with the plaint pursuant to the provisions of Order 3 rule 2 (c) of the Civil Procedure Rules as his evidence in chief. In the statement the plaintiff stated that he is a co-administrator of the estate of the deceased who was the registered owner of the suit property until the defendant who is not related to his family fraudulently caused the said property to be transferred to her name by transmission through a grant of letters of administration which she obtained in Kiambu Succession Cause No.27 of 1989. He stated that the said succession cause related to one, Obadia Ciira Wathina and not the deceased who is his father. He urged the court to cancel the defendant's title so that the property can revert to the name of the deceased. The plaintiff produced in evidence as exhibits; a copy of an extract of the register of the suit property, a copy of the demand letter to the defendant dated 22nd July, 2014, a copy of the grant of letters of administration intestate dated 19th July, 2001 in respect of the estate of the deceased that was issued to the plaintiff and one, Samuel Njenga Kanari in Kiambu Senior Principal Magistrate's Court Succession Cause No. 124 of 2001 and a copy of the certificate of confirmation of the said grant of letters of administration dated 26th July, 2002.
4. I have considered the plaintiff's claim together with the evidence that was tendered in proof thereof. From the evidence on record, I am satisfied that the plaintiff has proved his claim against the defendant on a balance of probability. The plaintiff has proved that he is an administrator of the estate of the deceased and that the deceased was the registered proprietor of the suit property until 15th January, 2008 when the suit property was transferred to the defendant by transmission pursuant to the grant of letters of administration that was issued in Kiambu Succession Cause No. 27 of 1989. The plaintiff has proved that the said Succession Cause related to the estate of one, Obadia Ciira Waithira and not the deceased. I have noted from the grant of letters of administration intestate in respect of the estate of the deceased that was issued to the plaintiff on 19th July, 2001 that the deceased died on 10th November, 1991. It was not possible therefore to have succession proceedings in respect of his estate in the year 1989. The plaintiff's contention that Kiambu Succession Cause No. 27 of 1989 in which the defendant obtained a grant of letters of administration on the strength of which the suit property was transferred to her concerned the estate of someone else and not the deceased is therefore not far-fetched. The defendant did not defend the suit. The evidence that was given by the plaintiff was therefore not controverted. In the face of evidence that the suit property was transferred to the defendant when the registered owner was deceased on the strength of a grant of letters of administration that was issued in a succession cause that did not relate to the deceased, the only conclusion this court can make is that the defendant acquired the suit property illegally and fraudulently as claimed by the plaintiff. Section 80(1) of the [*Land Registration Act*, 2012](#) gives this court power to rectify the register of land by directing that any registration be cancelled or amended if it is satisfied that the same was obtained, made by fraud or mistake. The plaintiff has established that the defendant was registered as the proprietor of the suit property by fraud. The plaintiff is in the circumstances entitled to the relief sought for the rectification of the register of the suit property.
5. Due to the foregoing, I hereby enter judgment for the plaintiff against the defendant as prayed in paragraph (a) the plaint dated 6th October, 2014. The register for LR No. Ndumberi/Tinganga/T.532



shall be rectified by the cancellation of entries numbers 5, 6 and 7 thereof. Since the suit was not defended, each party shall bear its own cost of the suit. A copy of this judgment shall be served by the plaintiff upon the defendant personally or through her daughter at the place where the defendant is said to have been served with the summons and an affidavit of service shall be filed in court. No action shall be taken in execution of the judgment herein until after the expiry of 60 days from the date of service of a copy of the judgment upon the defendant as aforesaid.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29TH DAY OF JANUARY, 2016.

S. OKONG'O,

JUDGE.

In the presence of:-

Ms. Kemunto h/b for Kimani for the plaintiff

N/A for the defendant

Kajuju Court Assistant

