



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAIROBI**  
**ELC CIVIL CASE NO. 625 OF 2010 (OS)**

**1. BETH WAIRIMU NDUNG'U**

**2. RACHAEL WANJIKU KAMAU.....APPLICANTS**

**=VERSUS=**

**1. JOSEPH KIBUI**

**2. JACKSON GUYO**

**3. EVERLYN MURUGI WARARI.....RESPONDENTS**

**J U D G M E N T**

1. This matter was commenced by way of an Originating Summons dated 9<sup>th</sup> December, 2010.
2. In the Originating Summons, the Applicants are seeking for the following orders:-

**(a) THAT this court be pleased to issue declaration that BETH WAIRIMU NDUNG'U and RACHEAL WANJIKU KAMAU are he bona fide owners of the plots 18 and 19 respectively situated within that parcel of land known as L.R.No.7418/24 Ruiru township.**

**(b) THAT in the alternative the court be pleased to issue a declaration that BETH WAIRIMU NDUNG'U and RACHAEL WANJIKU KAMAU are each entitled to a plot within that parcel of land known as L.R.NO.7418/24.**

**(c) THAT a permanent injunction does issue restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from interfering with the Applicants occupation and quiet possession of Plots Nos.18 and 19 respectively.**

**(d) THAT this honourable court be pleased to order that the 3<sup>rd</sup> Respondent and the Administrators of the Estate of Alfred Mike Murithi (as may be appointed ) do execute transfer of plots No.s 18 and 19 situated within that parcel of land known as LR. No. 7418/24 Ruiru township.**

3. The 2<sup>nd</sup> Applicant granted to the 1<sup>st</sup> Applicant authority to swear all the requisite affidavits on her behalf.
4. In her Affidavit, the 1<sup>st</sup> Applicant deponed that on 8<sup>th</sup> December, 2000, her, together with the 2<sup>nd</sup>

- Applicant, purchased plot numbers 18 and 19 respectively from Esther Wangui and the 3<sup>rd</sup> Respondent respectively in the parcel of land known as L.R.No.7418/24 situated in Ruiru Township.
5. According to the 1<sup>st</sup> Applicant, they were issued with share certificates for plot nos.18 and 19 by Nowel Business Agencies in which the parcel of land indicated therein was L.R.No.7418/23 and not 7418/24; that the said land was later on identified as L.R No.7418/23B and later on as L.R.No.7418/24 and that upon the purchase of the said plots, they took possession of the same but did not occupy or develop them.
  6. The 1<sup>st</sup> Applicant deponed that before Esther Wangui could execute the Transfer, she died; that she was later informed by Esther's daughter that as at the time of Esther's death, L.R.No7418/24 had not been transferred to Esther Wangui and Evelyn Warari but was still in the name of the original owner, Wilson Waithaka Gitau and that after the death of Esther, Mr. Waithaka transferred the land to the deceased's son, Alfred Muriithi and Evelyn Warari.
  7. It is the Applicant's case that instead of Alfred Mike Muriithi transferring plot numbers 18 and 19 to them, he sold the plot to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents; that Alfred sold the two plots to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents without consulting his co-administrator, Margret Mukami Muriithi and that by the time of the sale, Alfred was not a director of Nowel Business Agencies.
  8. The co-administrator of the Estate of Esther Wangui, Margaret Mukami Macharia, swore an Affidavit in which she deponed that the deceased mother and Teresia Njoki Mwaura bought the suit property from one Wilson Waithaka Gitau; that the land was however left to the management of her late mother and the 3<sup>rd</sup> Respondent who were managing it under the name of Nowel Business Agencies and that her late mother together with Evelyn paid Kshs.220,000 in 1994 leaving a balance of Kshs.1,300,000.
  9. According to Margaret's Affidavit, her mother and Evelyn sub-divided the land into 40 plots; that they sold plot numbers 7418/24-18 and 7418/24-19 to the 1<sup>st</sup> and 2<sup>nd</sup> Applicants' respectively and that at the time of the sale, the land was known as L.R.No.7418/23 before it changed to L.R.No.7418/23B and then 7418/24.
  - 10.It is the deposition of Margaret that upon the death of her mother, her, together with her brother Alfred were appointed as co-administrators of Esther's Estate and that after paying to the initial owner of L.R.No.7418/24 the full purchase price, Alfred and Evelyn registered the suit property in their names.
  - 11.It is the deposition of Margaret that the succession cause in respect of her mother's Estate is ongoing and that it was only upon confirmation of the grant that the transfer of all the 40 plots would have been effected.
  - 12.In his Replying Affidavit, the 1<sup>st</sup> Respondent deponed that he is a bona fide purchaser of land referred to as L.R.No.7418/24/18; that he purchased the land from Alfred Muriithi Mike (deceased) on 13<sup>th</sup> July, 2009 and that upon payment, he was given a share certificate by Nowel Business Agencies.
  - 13.The 1<sup>st</sup> Respondent deponed that the property he bought forms part of L.R.No.7418/24 which was previously registered in the name of Wilson Waithaka Gitau who later sold it to Alfred Mike Muriithi and Evelyn Murungi Warari.
  - 14.According to the 1<sup>st</sup> Respondent, after the Application for change of user was allowed, the land was given a new number being 7418/33; that after sub-division, the land known as 7418/24/18 is now known as 7418/57 and that he has since developed the land.
  - 15.The 3<sup>rd</sup> Respondent on the other hand deponed that she entered into a business relationship with Esther Wangui Macharia (deceased), Teresia Njoki Mwaura and Fatuma Said whereby they purchased LR.No.7418/24 Ruiru from Mr. Waithaka Gitau and that Plots 18 and 19 are within L.R.No.7418/24.
  - 16.According to the 3<sup>rd</sup> Respondent, her, together with Esther, Alice, Liberatta and Catherine also purchased L.R.7418/23 from Mr. Waithaka Gitau.
  - 17.The 3<sup>rd</sup> Respondent deponed that having purchased L.R.No. 7418/24 and 7418/23, the group members subdivided the parcel of land and allocated themselves the plots on a pro-rata basis and that each member had the liberty to independently deal with and transact in her personal plots.
  - 18.The 3<sup>rd</sup> Respondent stated in her affidavit that before Esther died, they had each disposed all their

- shares in LR No 7418/24 to third parties and that by the time LR No. 7418/24 was eventually transferred to her and Esther's son, they had sold off the plots.
19. According to the 3<sup>rd</sup> Respondent's deposition, Esther's son, Mr. Muriithi, informed her that the process of administration and confirmation of grant had been completed and that he was the one who was entitled to his mother's share in the said property hence the issuance of a Certificate of Title for plot No.7418/24 in their names.
  20. The 3<sup>rd</sup> Respondent finally deposed that plot numbers 18 and 19 belonged to the late Esther; that she was not involved in the sale of the said plots and that she is ready and willing to transfer the suit property to a bona fide purchaser.
  21. When the matter came up for hearing, I was informed that the 2<sup>nd</sup> Applicant had settled the matter out of court with the 2<sup>nd</sup> Respondent. What remained for hearing was the dispute between the 1<sup>st</sup> Applicant and the 1<sup>st</sup> and 3<sup>rd</sup> Respondent.
  22. The 1<sup>st</sup> Applicant, PW1 reiterated in her evidence in chief the depositions that are in her Affidavit. I have already summarised that evidence.
  23. PW1 emphasised that she bought plot number 18 from the late Esther in the year 2000 and that after Esther died, her son unlawfully sold the said land to the 1<sup>st</sup> Respondent in the year 2009.
  24. According to PW1, the late Esther gave her the share Certificate for plot number 18 after she completed paying the purchase price of Kshs.150,000.
  25. In cross examination, PW1 stated that she did not have any claim as against the 3<sup>rd</sup> Respondent; that she knew that Esther's son had sold her plot to the 1<sup>st</sup> Respondent in the year 2009 and that by that time, Esther's son had already been murdered.
  26. According to PW1, she knew the plot she was buying was the plot that the 1<sup>st</sup> Respondent is now claiming, that is plot number 18 and that the plot is next to her aunt's plot which is plot number 19 and Esther's daughter's plot which is plot number 17.
  27. Although in the certificate that was issued to her it was indicated that she had purchased a portion of L.R No. 7418/23, PW1 stated that number "23" was changed to read "24"; that by the time she was purchasing the land, there were no title documents and that she was given a sketch map which showed the plot that she bought.
  28. The 1<sup>st</sup> Respondent, DW1, stated that he bought his land from the late Alfred Michael Muriithi; that his land was plot number 7418/24/18 and that he only purchased the sub-division after conducting a search.
  29. According to DW1, he was given a copy of the Certificate of Title for L.R.No. 7418/24 by the late Alfred whereafter he entered into an agreement of sale dated 13<sup>th</sup> July, 2009 with him.
  30. DW1 informed the court that after paying the purchase price of Kshs.520,000, Alfred gave him a share certificate for the plot he had purchased and that after subdivision, he was issued with a Deed Plan for L.R. No.7418/33 and that after the change of user was approved, his plot was allocated a new number, to wit, L.R.No.7418/57.
  31. DW1 stated that other than LR.No.7418/24, there is also another piece of land known as L.R 7814/23 which also has a plot known as "18" which is different from the land that he owns.

### **Submissions:**

32. The 1<sup>st</sup> Applicant's counsel submitted that from the evidence adduced, Mr. Mike Alfred Muriithi, upon the acquisition of the limited letters of administration, went ahead to illegally and unlawfully sell the suit property to a third party with the sole purpose of defrauding the Applicants.
33. The Applicants' counsel submitted that the administration of the Estate of the late Esther had not been confirmed and that in any event Alfred Muriithi was not a director of Nowel Business Agencies. As such, it was submitted, he lacked capacity to conduct any business in respect of the suit property.
34. The Applicants' counsel submitted that L.R.No.7418/23 and L.R.NO.7418/24 are separate and distinct and that the evidence by PW1 shows that although the share certificate from Nowel Business Agency indicated that she had been allocated plot number 18 within L.R.No.7418/23, she was informed that L.R. NO. 7418/23 had sold out and that is why she was shown plot No. 18 of L.R.No.7418/24 which she inspected and proceeded to buy.

- 35.The Applicants' counsel submitted that the person with whom the 1<sup>st</sup> Respondent dealt with as the alleged purchaser was not the proprietor of the suit property and that the alleged sale was therefore null and void.
- 36.The 1<sup>st</sup> Respondent's counsel submitted that all the documents that were produced by the 1<sup>st</sup> Applicant shows that she purchased a plot within L.R. No.7418/23.
- 37.Counsel submitted that the Applicant did not call Margaret Mukami Macharia, the co-administrator of estate of Esther, as a witness.
- 38.The 1<sup>st</sup> Respondent's advocate submitted that the documents produced by his client shows that the 1<sup>st</sup> Respondent bought and owned plot No. 18 in L.R.No.7418/24 and that he purchased the said plot from Alfred Muriithi.

### **Analysis and findings:**

- 39.The 1<sup>st</sup> Applicant is seeking for an order of the court declaring her as the bona fide owner of plot number 18 situated within parcel of land known as L.R. No. 7418/24 Ruiru township.
- 40.The 2<sup>nd</sup> Applicant on the other hand was seeking for the same prayer, but in respect to plot number 19. However, the 2<sup>nd</sup> Applicant compromised the suit with the 2<sup>nd</sup> Respondent. This judgment is therefore in respect to the 1<sup>st</sup> Applicant's claim alone.
- 41.The evidence that was adduced by the 1<sup>st</sup> Applicant, PW1, was that she purchased plot number 18 from the late Esther Wangui Macharia in the year 2000.
- 42.According to PW2, she was issued with a share certificate which, instead of indicating parcel of land number L.R.No.7418/24, indicated L.R.No.7818/23.
- 43.It was the evidence of PW1 that after she purchased the said plot, she took possession but did not occupy or develop it.
- 44.PW1 informed the court that a year later, Esther died and that by that time, a Certificate of Title had not been issued to the proprietors of Nowel Business Agencies in which Esther and the 3<sup>rd</sup> Respondent were partners.
- 45.In her Affidavit, PW1 deponed as follows:-

**“THAT upon the death of the said Esther Wangui Macharia her now also deceased son one Alfred Mike Muriithi together with Evelyn Warari completed payment of the suit parcel of land in the year 2008 and the said Wilson Waithaka transferred the suit parcel of land to them and instead of the said Alfred Mike Muriithi now also being a director of the said holding company Nowel Business Agencies, transferring the said plots 18 and 19 in the suit land to us he went ahead to sell the same plots to other persons being the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein.”**

- 46.The 1<sup>st</sup> Applicant admitted on oath that although she paid Kshs.150,000 for plot number 18 to Esther, Esther and her partner had not completed the payment of the entire suit property, being L.R.No.7418/24. However, after the death of Esther, Mr. Muriithi the 3<sup>rd</sup> Respondent paid the balance of the purchase price to the initial owner of L.R. No.7418/24.
- 47.The evidence before this court shows that L.R. No.7418/24 was transferred to Alfred Mike Muriithi and Evelyn Murungi Warari on 27<sup>th</sup> November, 2008. By this time, Esther had already passed on.
- 48.The Transfer document that was signed by the 3<sup>rd</sup> Respondent and Alfred dated 12<sup>th</sup> November, 2008 shows that L.R.No.7418/24 was transferred to the two by Mr. Wilson Waithaka Gitau as purchaser for a consideration for a consideration of 800,000.
- 49.The Transfer document that was produced in evidence by DW1 does not show that L.R.No.7418/24 was transferred to Alfred Mike Muriithi as an administrator or a beneficiary of the Estate of the late Esther.
- 50.Indeed, as confirmed by the Applicant herself, by the time Esther died, she had not acquired L.R. No.7418/24 although she purported to sell to her plot number 18.
- 51.The 1<sup>st</sup> Respondent produced the sale agreement dated 13<sup>th</sup> July, 2009 between himself and

Alfred Muriithi.

52. In the agreement, Alfred Muriithi agreed to sell to the 1<sup>st</sup> Respondent his portion in L.R.No.7418/24, being L.R.No.7418/24/18 for Kshs.520,000.
53. DW1 paid the purchase price and after subdivision and the approval of the change of user, the 1<sup>st</sup> Respondent was issued with a Certificate of Title for the suit property.
54. The 1<sup>st</sup> Applicant did not place any evidence before the court to show that the 1<sup>st</sup> Respondent acquired the suit property fraudulently.
55. Indeed, considering that the 1<sup>st</sup> Respondent acquired the suit property from the registered proprietor, and in view of the 1<sup>st</sup> Applicant's admission that she never occupied or developed the suit property, the 1<sup>st</sup> Respondent could not have known about the 1<sup>st</sup> Applicant's interest in the suit property, if at all.
56. In any event, the share certificate that the 1<sup>st</sup> Applicant was issued with by the late Esther was in respect of plot no. 18 which was within L.R NO.7418/23 and not L.R.NO.7418/24.
57. The evidence before this court shows that indeed L.R.NO.7418/23 exists. The said land was also owned by Mr. Wilson Waithaka Gitau.
58. The 1<sup>st</sup> Applicant's claim that she was shown plot number 7418/24-18 and not plot number 7418/23-18 because the plots within 7418/23 had all been sold out was not corroborated at all.
59. The 1<sup>st</sup> Applicant did not tell the court why she did not insist to be issued with a share certificate for plot number 7418/24-18 if indeed plot number 7418/23-18 already had been sold out by Esther.
60. The totality of the evidence before me shows that the 1<sup>st</sup> Respondent lawfully purchased L.R. No.7418/24/18 from the then registered proprietor of the land, who, according to the Transfer document, did not acquire it as an administrator of the estate of Esther. Consequently, the issue as to whether the person who sold the land to the 1<sup>st</sup> Respondent had the legal capacity to do so does not arise.
61. Indeed, it is only the Estate of the late Esther that legitimately complain that the land that Alfred sold to the Plaintiff belonged to the late Esther and not the 1<sup>st</sup> Applicant. Having not called any evidence from the beneficiaries of the Estate of Esther, the 1<sup>st</sup> Applicant's claim must fail.
62. For those reasons, I dismiss the 1<sup>st</sup> Applicant's Originating Summons dated 9<sup>th</sup> December, 2010 with costs.

**Dated, signed and delivered in Malindi this 27<sup>th</sup> day of May, 2016.**

**O. A. Angote**

**Judge**