



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENT & LAND DIVISION**  
**ELC SUIT NO.405 OF 2013**

SYLVIA MWAKWANYAGA MAINA .....PLAINTIFF

=VERSUS=

JOSEPH MAINA NGANGA.....1<sup>ST</sup> DEFENDANT

GEOFFREY KINYANJUI MUNGAI.....2<sup>ND</sup> DEFENDANT

ELIZABETH NYAWIRA MBUGUA.....3<sup>RD</sup> DEFENDANT

JONATHAN SORIMPAN MASSORE.....4<sup>TH</sup> DEFENDANT

JOEL MUTARURA KARANJA.....5<sup>TH</sup> DEFENDANT

SUSAN WAMAITHA NYOKABI.....6<sup>TH</sup> DEFENDANT

**JUDGEMENT**

The Plaintiff herein *Sylvia Mwakwanyaga Maina* brought this claim against the six Defendants herein and has sought for these prayers;-

*a. An order directing the Registrar of Titles, Kajiado Land Registry to rectify the Register in respect of title number Kajiado/Kipeto/175, original number by nullifying all the transfers thereon and cancelling title numbers Kajiado/Kipeto 4348, 4349, and 5620 and reverting of the Register to the original form before the purported transfers .*

*b. Costs of the suit*

*c. Any other or further relief that the court may deem just to grant.*

The plaintiff in her claim stated that she is the widow and the sole administrator of her deceased's husbands estate *Joseph Maina Nganga*, who was the registered owner of the title number *Kajiado/Kipeto/175*. She further stated that at all material times, she has been in possession of the original Title Deed to the above stated parcel of land issued to the deceased on the 22<sup>nd</sup> October 1987. She further stated that on 4<sup>th</sup> December 2012, she noted that someone had marked her parcel of land with sticks and

stems. That upon carrying out a search, at the Lands office, the Plaintiff discovered that records of her late husband's land had been tampered with. It was her contention that on or about the **18<sup>th</sup> March 2011**, the 1<sup>st</sup> Defendant fraudulently impersonated the plaintiff's deceased husband and caused the said land to be subdivided into five (5) portions namely **Kajiado/Kipeto/ 4348, Kajiado/ Kipeto/4349, Kajiado/Kipeto/4350, Kajiado/Kipeto/ 4351** and **Kajiado/ Kipeto/ 4352** and title deeds were issued to the Defendants.

Further that on or about the **4<sup>th</sup> September 2012**, the 1<sup>st</sup> Defendant fraudulently purported to consolidate parcels numbers **Kajiado/Kipeto/4352, Kajiado/Kipeto/4350** ,and **Kajiado/Kipeto/4351** causing title number **Kajiado/Kipeto/5620** to be issued in his name. She also stated that the 1<sup>st</sup> Defendant fraudulently transferred **Kajiado/Kipeto/4349** to the 2<sup>nd</sup> Defendant and title number **Kajiado/Kipeto/4348** to the 4<sup>th</sup> Defendant.

In return, the 4<sup>th</sup> Defendant fraudulently transferred the same parcel of land to the 5<sup>th</sup> Defendant who subsequently transferred the same to the 6<sup>th</sup> Defendant who later transferred the said parcel to the 3<sup>rd</sup> Defendant without legal proprietorship.

It was her allegation that on or about the **5<sup>th</sup> December 2012**, the Plaintiff wrote a letter to the District Land Registrar, Ngong requesting him to place a restriction on the three (3) titles, **Kajiado/Kipeto/4349, Kajiado/ Kipeto/4348** , and **Kajiado/Kipeto/5620** which are subdivisions from the original title **Kajiado/Kipeto/175** . That further, she reported the matter to Kajiado Police Station and CID Kajiado for investigations of the fraudulent dealings on the said parcel of land. She particularized the fraud by the Defendants in paragraph 13 of the plaint. She further alleged that despite demand and notice of intention to sue having been given, the Defendants have refused and/or neglected to make good the Plaintiff's claim.

The Defendants herein were served with the process by way of Newspaper advertisement in the Daily Nation of Friday **29<sup>th</sup> March 2013**. The Defendants did not appear and/or file any defence. Subsequently interlocutory judgement was entered against the Defendants on **14<sup>th</sup> April 2014**, and the matter proceeded for formal proof on **24<sup>th</sup> November 2014**. The Plaintiff **Sylvia Mwakwanyanga Maina** gave evidence for herself and called no witness . She relied on her witness statement dated **21<sup>st</sup> February 2013**, filed together with the Plaint. She further reiterated that land parcel **No. Kajiado/Kipeto/175** was owned by her late husband **Joseph Nganga Maina** who died on the **16<sup>th</sup> November 1995**, as per the death certificate produced as exhibit No.1. She also produced a copy of the title deed dated **22<sup>nd</sup> October 1987**, in the name of **Joseph Maina Nganga** as exhibit No.2. It was her testimony that she is the sole administrator of the estate of her deceased husband as evident from letters of Administration Exhibit No.3. The Plaintiff further testified that on **4<sup>th</sup> December 2012**, one of her sons , told her that he had been informed that some people were seen surveying her parcel of land in Kajiado. Since the Plaintiff had not sold the land, she went to check on the said land and confirmed that indeed the land had been surveyed. She testified that she uprooted the planted boundary features and further went to Kajiado land's office to check what was happening.

She went to carry a search at the Ngong Land's office and she retrieved a copy of the green card. That is when she discovered to her utter shock that the land had been subdivided into five parcels of land that is **Kajiado/Kipeto/4348, Kajiado/Kipeto/4349, Kajiado/Kipeto/4350, Kajiado/Kipeto/4351, and Kajiado/Kipeto/4352**. She further noted that **parcels No. Kajiado/Kipeto/4350, Kajiado/Kipeto/ 4351** and **Kajiado/ Kipeto/ 4352** had been amalgamated and formed one title no. **Kajiado/Kipeto/ 5620** in the name of **Joseph Maina Nganga**.

Further she noted that the one of the parcel of land was for **Geoffrey Kinyanjui Muigai** and **Kajiado/Kipeto/ 4348** was for **Jonathan Solipan Masoore** who later sold it to the 5<sup>th</sup> Defendant **Joel Mutarura Karanja**. Thereafter 5<sup>th</sup> Defendant sold the same to 6<sup>th</sup> Defendant, **Susan Wamaita Nyokabi** .

The Plaintiff produced a copy of the green card as exhibit No.4 and letter to the Land Registrar Ngong as exhibit No.5. It was her testimony that she did not subdivide the said land nor was it done by her late husband because by 2011 her husband was already deceased having died in the year 1995 as per the Death Certificate exhibit 1. Plaintiff further testified that she does not know the Defendants herein and she had never seen any of them. She also never gave consent for the subdivision of the said parcel of land.

It was her further testimony that she reported the matter to CID and recorded her statement. She further put a restriction on the said parcel of land.

After she reported the matter to the police, the CID wrote a letter to the Land Registrar, Kajiado dated 24<sup>th</sup> January 2013 which she produced as exhibit No.6. She further wrote demand letters to the Defendants through Box No. 24 Kajiado. The Demand Letters were produced as exhibits No.7. Having failed to trace the Defendants, she served them with the Court process through Newspaper advertisement after obtaining a court order. She therefore urged the court to cancel all the resultant titles from titles No.175 which is still in the name of her late husband **Joseph Maina Nganga** as evident from exhibit No.2.

After the oral evidence in court, the Plaintiff filed written submissions on 4<sup>th</sup> December 2014, which the court has carefully read and considered.

The Court has now carefully considered the pleadings herein, the evidence in court and the exhibits produced in court and the court makes the following findings:-

There is no doubt herein that one **Joseph Nganga Maina** died on 16<sup>th</sup> November 1995, as per the copy of the Death Certificate produced in court by the Plaintiff herein. There is also no doubt that land parcel no **Kajiado/Kipeto/175** was registered in the name of **Joseph Maina Nganga** on 22<sup>nd</sup> October 1987, having purchased the same from **Sapeina Ole Le Lesapeye** for a consideration of **135,000/=** as per the transfer document dated 22<sup>nd</sup> October 1987. There is also no doubt that the Plaintiff herein is the Administrator of the Estate of **Joseph Nganga Maina** as is evident from letters of confirmation of grant dated 17<sup>th</sup> January 1997, issued to the Plaintiff herein and produced in court as exhibit.

There is no doubt from the copies of the green card that parcels No. **Kajiado/Kipeto/175** was divided in the year 2011 and the subdivision culminated in five parcels of land being **Kajiado/Kipeto/4348, 4349,4950,4351** and **4452** which were all initially in the name of **Joseph Maina Nganga**. It is evident that by the year 2011, the said **Joseph Maina Nganga** was deceased having died in the year 1995. The Plaintiff herein was the administrator of his estate as confirmed by the confirmation of grant issued on 17<sup>th</sup> January 1997. The Plaintiff herein being the Administrator of the estate of the deceased was the only one with the power to sell and /or subdivide the land parcel No. **Kajiado/ Kipeto / 175** owned by the deceased.

The said power is vested to the Administrator by Section 79 of the Succession Act Cap 160 Laws of Kenya which provides that:-

***“ The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant and subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative”.***

The Plaintiff herein being the personal administrator of the estate of the deceased, **Joseph Maina Nganga**, then all the property of the deceased and in this case **Kajiado/ Kipeto/175** vested in her. The plaintiff therefore was the only one with the power to deal with the deceased property **Kajiado/ Kipeto/ 175** and no other person. Any other person dealing with the said property would be intermeddling in the same and this is contrary to **Section 45 of the Succession Act, Cap 160 Laws of Kenya** which provides that:-

**45(1) “ Except so far as expressly authorized by this Act or by any other written law, or by a grant of representation under this Act, no person shall for any purpose take possession or dispose off or otherwise intermeddle with any free property of a deceased person”.**

The Plaintiff alleged that she did not authorize the sale and/or subdivision of the suit property. From the green cards produced in Court, the same was done by **Joseph Maina Nganga**. The said **Joseph Maina Nganga** was an imposter since the real **Joseph Maina Nganga**, the proprietor of the **Kajiado/Kipeto/175** was deceased by the year 2011. Whatever action or dealing on the above stated land without authority of the plaintiff herein was illegal and fraudulently in nature. The end product of the said fraudulent action or dealing is therefore an **illegality, null and void**.

The Defendants though served with the court process through the Newspaper advertisement of **29<sup>th</sup> March 2013**, did not appear, or file Defence. The evidence by the Plaintiff is not controverted and the Court finds that it is evident that the Plaintiff herein who is the administrator of the estate of **Joseph Maina Nganga** herein did not authorize subdivision of **Kajiado /Kipeto/175**. However, it is evident that the said land was subdivided and new titles have been obtained. The said titles were obtained between the year 2011 and 2012.

The said subdivisions and registration was done under the repealed **Registered Land Act, Cap 300, Section 27(a)** of the said **Cap 300** (now repealed) provided that:-

**“The Registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all right and privileges belonging or appurtenant thereto”.**

Though the above position provides for the effect of registration of a person as a proprietor of **Land, Section 143(1) of the said Cap 300** (now repealed ) provided for situation where the Register may be rectified or any instrument of registration. It provides as follows:-

**“.....the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration ( other than a first registration ) has been obtained ,made or omitted by fraud or mistake”.**

The above position has been replicated in Section 80(1) of the Land Registration Act which provides that:-

**“ Subject to sub section (2) the Court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained made or omitted by fraud or mistake”.**

The impact of Section 80(1) of the Land Registration Act is that where the court is satisfied that the registration of land was obtained, made or omitted by fraud or mistake, the court can order rectification through cancellation or amendment.

Further though Section 26 of the Land Registration Act provides that title of a registered proprietor is prima facie evidence that the proprietor is the **absolute** and **indefeasible** owner of that land, such title may however be challenged on the ground of **fraud** or **misrepresentation** to which the proprietor is **proved to be a party** and/or where the certificate of title has been acquired **illegally, unprocedurally** or through a **corrupt scheme**. **Section 26(1)** of the **Land Registration Act** states that certificate of title can be challenged;

**“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—**

*a. On the grounds of fraud or misrepresentation to which the persons is proved to be a party on .*

*b. Where the certificate of title has been acquired, illegally, unprocedurally or through a corrupt scheme.*

The Defendants herein obtained registration after subdivisions of the parcel of land belonging to a deceased person without authority of the administrator of the estate who is the Plaintiff herein. The Defendants did not appear in court to offer an explanation. The Court finds that such registration was obtained through fraud, illegally or through corrupt scheme.

The above are sufficient reasons to warrant cancellation of the said registration. I will be persuaded by the findings in the case of Elijah Makeri Nyangwara Vs Stephen Mungai Njuguna & Another (2013) eklr, where the court held that title in the hands of an innocent third party can be impugned if it is proved that the said title was obtained illegally , unprocedurally or through corrupt scheme.

Having now carefully considered the available evidence and the relevant laws, the court finds that the plaintiff has proved her case on a balance of probabilities.

Consequently, the court enters judgement for the Plaintiff against the Defendants jointly and severally on the following terms.

*a. An order directing the Registrar of titles ,Kajiado Land Registry to rectify the Register in respect of title number Kajiado/ Kipeto/175 , original number by nullifying and cancelling all the subdivisions and transfers thereon and further nullifying and cancelling titles numbers ,Kajiado/ Kipeto/4348,4349, and 5620 thereafter reverting the Register to the original form before the purported subdivisions and transfers .*

*b. The Plaintiff is entitled to costs of this suit and interest thereon.*

It is so ordered.

**Dated, Signed and Delivered this 16th day of September, 2016.**

28 days Right of Appeal.

**L.GACHERU**

**JUDGE**

In the presence of

M/s Akware holding brief for Mr Maina for the Plaintiff

None appearance for the 1<sup>st</sup> Defendant

None appearance for the 2<sup>nd</sup> Defendant

None appearance for the 3<sup>rd</sup> Defendant

None appearance for the 4<sup>th</sup> Defendant

None appearance for the 5<sup>th</sup> Defendant

None appearance for the 6<sup>th</sup> Defendant

Court Clerk : Hilda

**L.GACHERU**

**JUDGE**