



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO. 107 OF 2016

1. PATI LIMITED

2. WERNER ERNST LIMACHER

3. WALTER PETER LIMACHER.....PLAINTIFFS

=VERSUS=

1. EUNICE NDUTA WANYOIKE

2. THE COUNTY LAND REGISTRAR, KILIFI COUNTY

3. THE CHIEF LAND REGISTRAR

4. THE ATTORNEY GENERAL.....DEFENDANTS

J U D G M E N T

1. In their Complaint dated 9th May, 2016, the Plaintiffs averred that they have always been the registered owners of parcel of land known as Kilifi/Kijipwa 199 (the suit property) having purchased it from the original allottees and that in the year 2015, the 1st Defendant, in collaboration with the 2nd Defendant fraudulently removed the green card for the suit property and replaced it with a forged green card.

2. It is the Plaintiffs' claim that the forged green card shows the 1st Defendant as the registered proprietor of the suit card.

3. The Plaintiffs have prayed for an order compelling the Defendants to rectify the register by removing the forged green card and replacing the same with the green card showing them as the registered proprietors of the suit land.

4. Although the 1st Defendant was served with the Complaint and the Summons to enter appearance, she neither entered appearance nor filed a Defence. The 2nd – 4th Defendants filed their joint Defence and denied the allegations in the Complaint.

5. PW1, an advocate of the High Court, informed the court that on 4th August, 2016, the 1st Defendant, while impersonating a lady by the name Rosemary Wangui, purported to sell a portion of land known as CR. No. 27828 to his client.

6. PW1 informed the court that after the purported Rosemary Wangui, who is actually the 1st Defendant, signed the sale agreement, he went to the land registry with the copy of the sale agreement and the duly signed Transfer document together with the original title document.

7. On presenting the title document, he was informed that the document he had was forged and that the person appearing on the photographs attached on the Transfer document was not the genuine vendor, but the 1st Defendant. PW1 reported the matter to the police and abandoned the transaction.

8. PW2 informed the court that he was a director in the 1st Plaintiff's company; that his company is one of the registered proprietors of the suit property having purchased 1/3 share in it and that in January, 2016, he discovered that the original green card of the suit property had been replaced with a fake one showing that the suit property belongs to the 1st Defendant.

9. After reporting the issue of the forged green card to the police, PW1 informed the court that he learnt that the 1st Defendant is a persistent fraudster.

10. PW3 informed the court how him, together with his friend, Jane Wanjiru Schiffer and John Wangari Krieger, purchased parcel of land Kilifi/Kijipwa 199 and 240; that in 1996, they transferred 1/3 share held by Jane Wanjiru Schiffer and Jane Wangari to the 1st Plaintiff and that when their advocates went to settle the payable rates in respect to the suit property, they discovered that the green card had been replaced.

11. Jane Wanjiru Schiffer, PW4 informed the court that she sold her share in the suit property to the 1st Plaintiff in 1996 after obtaining the consent of the Board.

12. PW4 informed the court that she does not know the 1st Defendant and that the fraudulent acts of the 1st Defendant were reported to the police in Kilifi.

13. The Defendants did not adduce any evidence to controvert the Plaintiffs' assertion that the 1st Defendant, in collusion with the 2nd Defendant, forged the green card in respect to the suit property.

14. The Plaintiffs produced in evidence a Title Deed for the suit property that was issued in the names of the Plaintiffs on 15th April, 1998.

15. The Plaintiffs also produced in evidence a copy of the green card showing that Jane Wanjiru Schiffer transferred the suit property to the 1st Plaintiff on 1st April 1993.

16. The evidence before me shows that indeed the Plaintiffs are the registered proprietors of the suit land and the 1st Defendant is a fraudster who is roaming the country selling land which does not belong to her.

17. For those reasons, I find and hold that the Plaintiffs have proved their case on a balance of probabilities and I allow the Plaint dated 9th May, 2016 as prayed.

Dated, signed and delivered in Malindi this **14th** day of **November**, 2016.

O. A. Angote

Judge