



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELC CASE NO. 63 OF 2015**

**MARY MUTHONI GICHIRA**

**(Suing thro' her daughter and next friend NAOMI ANN WAMBUI**

**GICHIRA.....PLAINTIFF**

**VERSUS**

**SAMUEL MURIUKI GICHIRA.....DEFENDANT**

**JUDGMENT**

The plaintiff **MARY MUTHONI GICHIRA** suing through her daughter and next friend **NAOMI ANN WAMBUI GICHIRA** filed this suit on 27th May 2015 seeking judgment against the defendant in the following terms:-

***(a) Cancellation of registration of the defendant's name from the register as proprietor of land parcels No. KIINE/KIBINGOTI/NGUGUINE/3522, 3523, 3524 and 3525, Consolidation of the four portions of land into the former land parcel No. KIINE/KIBINGOTI/NGUGUINE/955 and subsequent registration of the plaintiff as the proprietor of land parcel number KIINE/KIBINGOTI/NGUGUINE/955.***

***(b) Costs of this suit.***

***(c) Any further relief this Court may deem fit.***

The plaintiff's claim is that at all material time relevant to this suit, she was the lawful owner of the land parcel No. KIINE/KIBINGOTI/NGUGUINE/955 (the suit land). However, sometime in the year 2015, she discovered that on 4th July 2012 the defendant had fraudulently transferred the suit land to himself and later, sub-divided it into four new numbers namely KIINE/KIBINGOTI/NGUGUINE/3522, 3523, 3524 and 3525. The plaintiff therefore filed this suit in which she alleges fraud on the part of the defendant particulars of which are pleaded in paragraph 5 of the plaint as:-

***1. Transferring the suit land unlawfully.***

***2. Obtaining the certificate of confirmation of grant for the Estate of the plaintiff yet she is still alive.***

***3. Registering form RL 19 and RL 7 using a non-existence certificate of confirmation of grant.***

***4. Taking advantage of the plaintiff's un-healthy mind to transfer the land to himself.***

## **5. Conspiring to defraud.**

The defendant was served on 29th April 2016 as per the affidavit filed by **NICHOLAS MWANGI** an advocate of this Court on 20th June 2016. However, he did not enter any appearance or file a defence and on 20th June 2016, interlocutory judgment was entered against him. The case was thereafter listed for formal proof on 23rd November 2016.

**NAOMI ANN WAMBUI GICHIRA** (PW1) is the daughter of the plaintiff who suffers from mental illness as per the report of **DR. PETER NDIRANGU** the Officer in charge of the Psychiatric Department at Karatina Hospital dated 19th September 2014 (Plaintiff's Exhibit 1). It is for that reason that she has filed this suit on her behalf against the defendant who is her brother. It is her evidence that the plaintiff was the registered proprietor of the suit land but in 2015, she discovered that the defendant had fraudulently transferred the suit land into his names in July 2012 on the strength of orders issued in Succession Cause No. 109 whose year is not reflected. All this was done notwithstanding the fact that the plaintiff is still alive. The defendant had then sub-divided the suit land into four portions being KIINE/KIBINGOTI/NGUGUINE/3522, 3523, 3524 and 3525 which he then had registered in his names as per the Green Cards produced – Exhibits 3 (a) (b) (c) and (d). It was also discovered that the plaintiff's Identity Card was missing and a report was filed at the Baricho Police Station and Police Abstract issued (Exhibit 4). Prior to filing this suit, a demand letter was addressed to the defendant but he did not respond. This suit was then filed.

As the defendant did not enter any appearance nor file any defence, the plaintiff's evidence is uncontroverted.

I have considered the plaintiff's evidence including the documentary exhibits produced. It is clear that until 4th July 2012, the suit land was registered in the names of the plaintiff. However, the Green Card to the suit land (Exhibit 2) shows that on 4th July 2012, and on the strength of a Succession Cause at the Kerugoya Senior Principal Magistrate's Court whose number is given as 109 but no year is indicated, the suit land was registered in the names of the defendant and new title deeds issued to him in respect of four new parcels being KIINE/KIBINGOTI/NGUGUINE/3522, 3523, 3524 and 3525 (Exhibits 3 (a) (b) (c) and (d). This Court was told that the plaintiff who suffers from mental illness is alive but could not come to Court. There is no reason to doubt that evidence which, in any case, was not rebutted. The subdivision of the suit land and transfer into the defendant's names was done in July 2012 on the basis of some un-known Succession Cause. There could be no proper orders issued in any Succession Cause in respect of **"the Estate"** of the plaintiff when she is still alive to-date. That is clear evidence that the transfer of the suit land into the defendant's names in July 2012 and subsequent sub-division into four parcels which were then registered into the defendant's names was all done fraudulently. And the Land Registrar's office in Kerugoya must have been a party to this fraud. How else could the suit land be transferred into the names of the defendant on the basis of a Succession Cause that does not even bear the year it was filed nor the date the orders were issued. I am satisfied that the plaintiff has met the standards of proof required to prove fraud and has established her case against the defendant to warrant the orders sought in the plaint.

There will therefore be judgment for the plaintiff against the defendant in the following terms:-

***(a) Cancellation of the registration of the defendant's names from the register as proprietor of land parcels No. KIINE/KIBINGOTI/NGUGUINE/3522, 3523, 3524 and 3525 and a consolidation of the four portions of land into the former land parcel No. KIINE/KIBINGOTI/NGUGUINE/955 and subsequent registration of the plaintiff as the proprietor of land parcel No. KIINE/KIBINGOTI/NGUGUINE/955.***

***(b) No order as to costs.***

**B.N. OLAO**

**JUDGE**

**9<sup>TH</sup> DECEMBER, 2016**

Judgment delivered, dated and signed in open Court this 9<sup>th</sup> day of December, 2016

Ms Kiragu for Mr. Ngigi for Plaintiff present

Defendant absent

Right of appeal explained.

**B.N. OLAO**

**JUDGE**

**9<sup>TH</sup> DECEMBER, 2016**