



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
ENVIRONMENT AND LAND COURT
CIVIL CASE NO.151 OF 2012

JOEL NDIRITU RUKWARO.....PLAINTIFF

VERSUS

SIMON MWANGI.....DEFENDANT

J U D G M E N T

The plaintiff brought this suit on the 11/7/2012 as the legal representative of his deceased father Jacob Rukwaro Ndagutha who died on the 31st of August 1989 after having obtained Limited Grant of Letters of Administration Ad Litem issued in High Court Succession Cause No.830 of 2010 Nyeri in respect of the estate of his deceased father. The plaintiff avers that his deceased father was a shareholder of Matanya Estate Ltd, a land buying company and that after balloting his said father of was allocated Plot No.212.

On 12.5.1998 the District Officer Lamuria Division being the Chairman of the Committee of Matanya Estate Ltd confirmed by issuing a plot No.212 and confirmed that the father of the plaintiff was eligible to sign his transfer form for the purpose of securing the title deed of his said plot.

The plaintiff further adds that on 23/8/2010, he bought the official search for the said plot which had been registered with the lands office Nanyuki as **L.R.LAIKIPIA/NANYUKI WEST TIMAU BLOCK 2/212** Matanya Marura and learnt that the said piece of land was in the name of the defendant who was registered the owner of the said piece of land on 9/5/2007.

The plaintiff adds that the defendant was fraudulently registered the owner of the said piece of land which rightfully belonged to his deceased father. As a result of the fraud, the defendant became the registered proprietor of the suit land on 9/5/2007 when he was also issued with the title deed of the same.

The plaintiff avers that there was no justifiable cause or excuse for the suit land to be registered in the name of the defendant hence the registration of the defendant as the owner of the suit land was fraudulently made and the said registration should be cancelled and the suit land to revert back to its original status or be registered in the plaintiff's name. The plaintiff further adds that there is no other suit pending, and that there have been no previous proceedings in any court between the plaintiff and the defendant over the same subject matter.

In the premises the plaintiff's claim against the defendant is for an order directing the District Land Registrar Laikipia to delete the name of the defendant from the Lands Register in respect of the said suit land, and in its place register JACOB RUKWARO NDAGUTHA as the proprietor of the said piece of land or in the name of the plaintiff. Despite demand and notice of intention to sue having been given the

defendant has refused to make any amend and this action has been rendered necessary. The cause of action arose at Nyeri within the jurisdiction of this Honourable Court.

The plaintiff prays for judgment against the defendant for a declaration that the defendant fraudulently caused himself to be registered the proprietor of the suitland parcel No.LAIKIPIA/NANYUKI WEST TIMAU BLOCK 2/212 Matanya Marura which suit land should belong to JACOB RUKWARO NDAGUTHA the deceased father of the plaintiff **and** an order that the District Land Registrar Laikipia be ordered to delete the name of the defendant from the register of the suit land and the same to be registered either in the name of JACOB RUKWARO NDAGUTHA or in the plaintiff's name, and further that the District Land Registrar Laikipia be ordered to dispense with the production of the original title deed issued to the defendant during cancellation of the same.

The defendant was served with plaint and summons to enter appearance but failed to enter appearance and file defence hence interlocutory judgment was entered and case fixed for formal proof.

The matter proceeded on 23/7/2013. Mr. Joel Ndiritu Rukwaro produced a Limited Letters of Administration dated 30/9/2010 for his father's estate. He stated that his father bought shares at Matanya farmers corporative society limited. He produced a membership card No.297 dated 29/6/1969. His father paid an entrance fee of Kshs.25. On 4/1/1970 he paid Kshs.300 for shares and on 7/10/1970 he paid Kshs.15 for more shares. He was later issued with a ballot card No.2083 signed by District Officer, Central Division. That the ballot card was changed to read 2173 later changed to read 2012 by the chairman between 1970 and 1978. The change was made to correspond with the members register. On 12/5/1998 the clearance certificate was issued to his father by the District Officer Kamunya Division and bears his father's name, identity Card number and plot No.2175 and the new No. 2012.

On 14/9/2006 he did a search for the L.R. No.LAIKIPIA/NANYUKI WEST TIMAU BLOCK 2/212 Matanya Marura and found it was in the name of Government of Kenya. On 15/1/2010 he did another search and noted that on 9/5/2007 the defendant was registered as the owner of the land and was issued with a title deed and on 29/1/2011 he cautioned the land and did a demand notice. He prays that the piece of land be registered in his name and the costs of the suit be borne by the defendant.

In his submissions Mr. Njuguna for the plaintiff states that the plaintiff was a victim of fraud and that the suit premises belonged to his father.

The court finds that the suit premises belonged to the plaintiffs father who was a shareholder of Matanyi Estate Ltd which was a land buying company. The plaintiff produced receipts for money paid by his father to the company in 1969 and 1970. He also produced a ballot card No.2083 allotted to his father signed by the District Officer then of Central Division Laikipia. He also produced a clearance certificate signed by the District Officer Lamuria Division who is reflected as chairman of the committee. The company amended plot number to read 2175 and finally to plot No.212 which was registered at the lands office. However, instead of the parcel of land being registered in the plaintiffs name, the same was registered in the Defendants name. Upon registration, the plaintiff complained to the Land Registrar, Laikipia who summoned the defendant but the latter refused to appear hence this case was filed.

The defendant was served with plaint and summons but failed to file a memorandum of appearance and defence hence interlocutory judgment was entered.

I do find that the plaintiff has proved that the defendant fraudulently caused the suit parcel to be registered in his name and therefore enter judgment for the plaintiff in terms of the prayers in the plaint thus;

- a. **A declaration is hereby issued that the defendant fraudulently caused himself to be registered the proprietor of the suitland parcel No.LAIKIPIA/NANYUKI WEST TIMAU BLOCK 2/212 Matanya Marura which suit land should belong to JACOB RUKWARO NDAGUTHA the deceased father of the plaintiff.**

- b. **An order is hereby issued that the District Land Registrar Laikipia be ordered to delete the name of the defendant from the register of the suit land and the same to be registered in the plaintiff's name, and further that the District Land Registrar Laikipia be ordered to dispense with the production of the original title deed issued to the defendant during cancellation of the same.**

Costs of the suit to the plaintiff plus interest at court rates.

Dated, signed and delivered on 11th day of July 2014.

A. OMBWAYO

JUDGE