



IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE NO. 43 OF 2011

PETERSON WACHIRA KARANI.....PLAINTIFF

=VERSUS=

MAHAMOUD MOHAMED.....DEFENDANT

J U D G M E N T

Introduction:

1. In the Plaint dated 4th May, 2011, the Plaintiff has averred that he is the owner of land Known as LAKE KENYATTA 11/142 (the suit property) having purchased it from Jonah Kiarri Nganga on 13th August 2002.
2. The Plaintiff further averred that the Defendant fraudulently and unlawfully proceeded the process of registering the suit property and his name and was issued with a title deed.
3. The Plaintiff is seeking for an order of cancellation of the title deed in respect of the suit property and to have the said land registered in his favour.
4. The Defendant was served with the Summons to Enter Appearance by way of substituted service in the Daily Nation Newspaper of 16th November 2011 but never entered appearance.

Plaintiff's case

5. The Plaintiff, PW1, informed the court that he bought the suit property from Johan Kiarri for Kshs.48,000. The agreement, which was duly witnessed was produced as exhibit P EXB1. The Plaintiff produced as PEXB 2 the letters of offer dated 31st January 1997 which was issued to the Defendant in respect to the suit property. An official search was also produced which showed that the suit property was registered in favour of the Defendant on 28th August 2006 as P EXB 3.
6. PW1 produced the sale agreement between the Defendant and John Kiarri Nganga, the person who sold the property to the him, dated 29th September 1997 for Kshs.40,000 as PEXB 6.
7. It was the evidence of PW1 that after he purchased the suit property from Mr. Kiarri, he took possession of the land and he has been in possession since then. The Plaintiff produced photographs as P EXB 5 showing the developments he has made on the suit property.
8. Mr. Johan Ng'ang'a, PW2, informed the court that he bought the suit property from the Defendant for Kshs.40,000. It was the evidence of PW2 that he later sold the suit property to the Plaintiff. The title document was however issued in the name of the Defendant in the year 2006 by mistake.

Submissions

9. The Plaintiff's advocate filed his submissions which I have considered.

Analysis and findings

10. This suit is undefended. The Plaintiff has produced the letter of offer which was issued to the Defendant on 31st January 1997 and an official receipt showing that the Defendant did pay the requisite 10% deposit to the Settlement Fund Trustee. Before the issuance of the title deed, the Defendant sold to PW2 the suit property on 29th September 1997.
11. It would appear that the Settlement Fund Trustees never rectified its records to show that sale of the suit property to PW2. Instead, the Settlement Fund Trustee processed the title in favour of the Defendant. That is the title that the Plaintiff wants cancelled.
12. The evidence before me shows that the title deed in respect of Lamu/Lake Kenyatta/II/142 was issued to the Defendant on 28th August 2006 by mistake. The Defendant sold the suit property to PW 2 who sold it to the Plaintiff on 13th August, 2002. The Plaintiff has been in possession since then.
13. In the circumstances, I find that the Plaintiff has proved his case on a balance of probabilities.
14. For the reasons I have given, I allow the Plaintiff's Plaint dated 4th May 2011 in the following terms:

(a) An order of rectification of the register by cancellation of land known as LAKE KENYATTA/II/142 be and is hereby issued.

(b) Land known as LAKE KENYATTA/II/142 be registered in favour of the Plaintiff

c. Each party to bear his or her own costs.

Dated and delivered in Malindi this 5th day of **September**, 2014.

O. A. Angote

Judge