



**Kamau (Suing as the Administrator of the Estate of James Kamau Kimani) v Onyango & another  
(Environment & Land Case 149 of 2018) [2024] KEELC 4897 (KLR) (20 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4897 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 149 OF 2018  
MN GICHERU, J  
JUNE 20, 2024**

**BETWEEN**

**MARGARET W. KAMAU (SUING AS THE ADMINISTRATOR OF THE  
ESTATE OF JAMES KAMAU KIMANI) ..... PLAINTIFF**

**AND**

**AMOS GODFREY ONYANGO ..... 1<sup>ST</sup> DEFENDANT**

**RAY O. ABOGE T/A ANNE A. WEDAH AND COMPANY  
ADVOCATES ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff seeks the following reliefs against the defendants.
  - a. A declaration that the plaintiff is the legal owner of L.R. Kajiado/ Ole Kasasi/1067, suit land.
  - b. A declaration that the sale and transfer of the suit land to the defendants is unlawful and fraudulent and cancellation of the 1<sup>st</sup> defendant's title deed.
  - c. Eviction of the 1<sup>st</sup> defendant from the suit land.
  - d. Rectification of the register to reflect the plaintiff as the bona fide owner of the suit land.
  - e. A permanent injunction restraining the 1<sup>st</sup> defendant his agents, servants, assignees or any other person claiming through him for interfering in any way with the plaintiff's ownership and quiet possession of the suit premises.
  - f. Kshs. 164, 270 being special damages of payment of legal fees.
  - g. Costs of this suit and interest thereon until payment in full.

This is as per the amended plaint dated 6/10/2021.



2. The plaintiff's case is as follows. She is the widow of James Kamau Kimani who is the registered owner of the suit land which he acquired after purchase in August 2008. James Kamau Kimani died when this case was pending hence his substitution by the wife. In December 2014, the deceased wished to sell the suit to Florence Vunoro Murila and others. When he conducted a search at Kajiado Land Registry, he found that his land was registered in the name of the 1<sup>st</sup> defendant Godfrey Onyango Nyaoro. This was very surprising because he did not know the 1<sup>st</sup> defendant and he had never sold his land to anybody.

When he complained to the Land Registrar, he too was surprised. He advised the deceased to report the matter to the police which he did vide OB No. 33/04/06/2014 at Ongata Rongai Police Station. The police conducted investigations and prepared a report which they handed over to the Land Registrar. Using the report, the Land Registrar summoned the 1<sup>st</sup> defendant. Instead of heeding the registrar summons, the defendant rushed to the High Court vide J.R. No. 388 of 2014 against the registrar. The said suit was dismissed.

3. The plaintiff has pleaded several particulars of fraud on the part of 1<sup>st</sup> and 2<sup>nd</sup> defendants as well as concealment and misrepresentation. They include forging and certifying a copy of the registered owner's ID, P.I.N and signature on various documents like application for consent, transfer form and spousal consent among others. The plaintiff also claims Kshs. 164,720/- which she paid to the advocate who prepared the sale agreement with the intended purchasers of the suit land.

4. In support of the case, the plaintiff filed the following evidence.

- i. Witness statement by James Kamau Kimani dated 15/6/2016.
- ii. Copy of sale agreement dated 5/12/2014.
- iii. Copy of titled deed for the suit land in the name of James Kamau Kimani complete with the serial No. 919894.
- iv. Copy of forged title deed with no serial numbers.
- v. Copy of title deed showing the 1<sup>st</sup> defendant as the purported registered owner.
- vi. Copy of ID and P.I.N of James Kamau Kimani
- vii. Copy of purported ID and P.I.N. of James Kamau Kimani.
- viii. Copy of Id of the spouse of James Kamau Kimani.
- ix. Receipt No. 429 from the plaintiff's advocate for payment of legal fees.
- x. Copy of transfer form dated 27/5/2014 for the suit land between James Kamau Kimani and the 1<sup>st</sup> defendant with the embossed passport photograph of a stranger who is James Kamau Kimani.
- xi. Purported sale agreement for the suit land between James Kamau Kimani and the 1<sup>st</sup> defendant dated 21/5/2014.
- xii. Copies of correspondence between the Plaintiff's advocate and Midikira and Company Advocates acting for the purchasers.
- xiii. Copy of notice issued by the District Land Registrar, Kajiado North to the 1<sup>st</sup> defendant.
- xiv. Copy of judgment in JR Case No. 388 of 2014.
- xv. Copy of certificate of death for James Kamau Kimani showing that he died on 27/3/2021.



- xvi. Copy of letter from the chief of Ndumberi Location dated 25/6/2021 showing that Margaret W. Kamau is the widow of the registered owner of the suit land.
5. The defendants filed a written statement of defence dated 19/1/2018 in which they aver as follows. Firstly, the 1<sup>st</sup> defendant is the duly registered owner of the suit land since 27/5/2014 and if there was a problem with the documentation, the Land Registrar ought not to have registered the 1<sup>st</sup> defendant as the owner of the suit land. Secondly, the 1<sup>st</sup> defendant admits that the Land Registrar sent him a notice dated 12/6/2014 intimating his intention to cancel his ownership of the suit land. Thirdly, the 1<sup>st</sup> defendant avers that he acquired the suit land through a bona fide sale transaction which went through all the required processes, and he paid the requisite consideration and the Land Registry accepted the documents that he presented as genuine. Fourthly, the notice issued by the Land Registrar to the 1<sup>st</sup> defendant was not proper because he himself was not involved in any fraud.
- For the above and other reasons, he prays for the dismissal of the plaintiff's suit.
6. In support of their case, the defendants filed the following evidence.
- i. Witness statements by Amos Godfrey Onyango Nyaoro and Ray Onoka Aboge.
  - ii. Copies of title deed for the suit land dated 5/8/2008, mutation form, certificate of official search, sale agreement, application for and consent of the Land Control Board.
  - iii. Copies of ID, P.I.N. certificate for James Kamau Kimani being No. 4420843 and A000157923L.
  - iv. Copy of affidavit of Mary Wambui Kamau.
  - v. Copy of transfer form dated 27/5/2014.
  - vi. Copy of KCB bankers cheque, KRA stamp duty pay in slip dated 27/5/2014 and copy of bank slip.
  - vii. Copy of application for Government valuation of the suit land.
  - viii. Copy of official receipt issued by the Kajiado North Land Registry dated 27/5/2014.
  - ix. Copy of official receipt issued by the Kajiado North Land Registry dated 27/5/2014.
  - x. Copy of application for registration dated 27/5/2014 .
  - xi. Copy of title deed dated 27/5/2014.
  - xii. Copy of acknowledgment of payment slip dated 21/5/2014.
7. At the trial on 21/3/2023 and 7/12/2023, the plaintiff and the defendants testified by adopting their witness statements and documents as their evidence before they were cross-examined by counsel for the adverse party.
8. In his written submissions dated 17/1/2024, the defendants' counsel identified the following issues for determination.
- a. Who is the owner of the suit land?
  - b. Did the 1<sup>st</sup> defendant acquire the title fraudulently?
  - c. Were the defendants involved in fraudulent activities?



d. Is the plaintiff entitled to the reliefs sought?

On the other hand, the plaintiff's counsel in his submissions dated 29/4/2024 identified three issues which are;

- a. Whether the defendants engaged in fraud, concealment and misrepresentation of facts to deprive the plaintiff off his rightful property.
- b. Whether the plaintiff has a valid title.
- c. Whether the plaintiff is entitled to the prayers sought.

Ideally, the plaintiff should have replied to the defendant's issues as envisaged by Order 18 Rule 2(2) Civil Procedure Rules. Be that as it may, I will determine all the seven issues raised by the learned counsel.

9. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, documents and testimony at the trial. I have also considered the written submissions by learned counsel for the parties. I make the following findings on the issues. On the first issue, I find that the plaintiff's husband is the registered and lawful owner of the suit land. This is because he is not the one who purported to sell land to the 1<sup>st</sup> defendant. The one who purported to sell the land was an imposter who was unknown to the land owner. He is only known to the defendants and they have not availed him to court as their witness. They have also not availed his true identity. Instead of cooperating with the police and the Land Registrar in exposing the fake James Kamau Kimani, the defendants have blocked every effort to bring him to book. If the person who purported to sell the land to the 1<sup>st</sup> defendant was genuine, he would have come forward and defended himself and the defendants. His keeping away and also being kept away shows that he is not ready to face the real owner of the land.
10. On the second issue, I find that the 1<sup>st</sup> defendant acquired the purported title fraudulently because it was not transferred to him by the registered owner. The certificate of title issued to the 1<sup>st</sup> defendant was acquired through a corrupt scheme and it has been successfully challenged by the plaintiff under Section 26 (1) (b) of the *Land Registration Act*. Article 40(6) of *the Constitution* of Kenya provides as follows.

“The rights under this Article do not extend to any property that has been found to have been unlawfully acquired”

In the case of *Dina Management –versus- County Government of Mombasa and others*, the Supreme Court of Kenya held as follows at paragraph 111;

“Article 40 of *the Constitution* entitles every person to the right to property subject to the limitations set out therein. Article 40(6) limits the rights as not extending them to any property that has been found to have been unlawfully acquired. Having found that the 1<sup>st</sup> registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter cannot be protected under Article 40 of *the Constitution*. The root of the title having been challenged, as we have already noted above the appellant could not benefit from the doctrine of bona fide purchaser”.

It is the same in this case. The person who purported to sell the suit land to the 1<sup>st</sup> defendant was not the owner and he could not therefore pass any title to the 1<sup>st</sup> defendant.

11. On the third of the defendants' issues, I find that fraud on their part has not been proved to the high standard set out in the case of *Ndolo –versus- Ndolo Civil Appeal No. 128 of 1995* but the fraud of



the purported seller has been proved to that standard and it affects the 1<sup>st</sup> defendant because unlawfully acquired property is not protected under Article 40 (6) of *the Constitution*.

12. Coming to the final issue, I find that the plaintiff is entitled to all the prayers sought because her husband did not sell the suit land to the 1<sup>st</sup> defendant or anybody else. Having decided on the above issues, I find that it is not necessary to delve into the plaintiffs issues because the findings above have necessarily decided on the three issues that the plaintiff raised.
13. In conclusion, I enter judgment for the plaintiff as prayed for in the amended plaint dated 6/10/2021.  
It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 20<sup>TH</sup> DAY OF JUNE 2024.**

**M.N. GICHERU**

**JUDGE**

