



Nyamu v County Land Registrar, Kajiado & 3 others; National Housing Co-operation (Interested Party) (Environment & Land Case 740 of 2017) [2024] KEELC 4727 (KLR) (13 June 2024) (Judgment)

Neutral citation: [2024] KEELC 4727 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 740 OF 2017**

**MN GICHERU, J
JUNE 13, 2024**

BETWEEN

LUCY WANJIKU NYAMU PLAINTIFF

AND

COUNTY LAND REGISTRAR, KAJIADO 1ST DEFENDANT

SILINKAI OLE MPIDAKI 2ND DEFENDANT

PERIS NYABISI ANYONA 3RD DEFENDANT

JASON KERANDI NYANTINO 4TH DEFENDANT

AND

NATIONAL HOUSING CO-OPERATION INTERESTED PARTY

JUDGMENT

1. The plaintiff seeks the following reliefs against the defendants and the interested party jointly and severally.
 - a. A declaration that LR No Kajiado/Kisaju/1693, the suit land, belongs to the plaintiff to the exclusion of anyone else whatsoever.
 - b. An order under Section 26 of the *Land Registration Act*, 2012 ordering the cancellation of all title deeds and green cards emanating as a result of the fraudulent illegal documents relating to the suit land and any transaction accruing therefrom be declared null and void.
 - c. General damages.
 - d. Costs of this suit.



- e. Interest on (c) and (d) above until payment in full.
- f. Any other relief that this court may deem just and fair to order.

This is as per the plaint dated 15/3/2017.

2. The plaintiff's case is as follows. She is the registered owner of the suit land which measures 4.05 hectares. She got registered on 14/5/2008 vide High Court (Nairobi) Succession Case No 2903 of 2002. The suit land had been sold by the 2nd defendant to the plaintiff's husband Arthur Nyamu Wamwiri in the year 1998. When the plaintiff's husband died on 14/2/2002, she filed the above mentioned cause and that is how she acquired the suit land as the widow of the registered owner. She has in her possession the original title deed issued to her in the year 2008. She has certificates of official search issued by the 1st defendant all showing that she is the registered owner of the suit land. After the death of the plaintiff's husband, the plaintiff learnt that the 2nd defendant had craftily, illegally and fraudulently interfered with the registration of the land records at Kajiado Land Registry such that a new green card and title deeds had been generated. The plaintiff reported the matter to the police as a result of which the 2nd defendant was charged at the Chief Magistrates Court in Kajiado in Criminal Case No 1070 of 2011 with the offence of obtaining registration by false pretenses contrary to Section 320 of the Penal Code. It is for the above stated reasons that she seeks the orders in this suit.
3. In support of her case, the plaintiff filed the following evidence.
 - i. Witness statement dated 15/3/2017.
 - ii. Copies of certificates of official search dated 22/1/2014, 6/6/2013, 19/9/2012 and 24/6/2011. The one dated 24/6/2011 shows the 4th defendant as the owner of the suit land while rest show that the plaintiff is the owner thereof.
 - iii. Copies of application for consent of the Land Control Board.
 - iv. Copy of letter of consent dated 10/3/1998.
 - v. Copy of title deed dated 14/5/2008.
 - vi. Copies of grant and certificate of confirmation in Nairobi HCCC 2903 of 2002.
 - vii. Copy of charge sheet in Criminal Case No 781/2011 at Kajiado where the 2nd defendant was charged with the offence of obtaining registration by false pretense contrary to Section 320 of the Penal Code.
4. The 1st defendant in a written statement of defence dated 3/8/2020 denies the plaintiff's claim generally and also denies that a notice of intention to sue was ever served on the Attorney General. The 1st defendant seeks the dismissal of the suit against it.
5. The 2nd, 3rd and 4th defendants in their written statement of defence and counterclaim dated 19/3/2018 deny the plaintiffs claim generally and aver as follows. Firstly, the 2nd defendant was charged in the criminal case as averred by the plaintiff but he was not found guilty. Secondly, the plaintiff is not the owner of the suit land and has never taken possession of the same. Thirdly, it is the plaintiff who is in possession of the forged documents and not the defendants. Fourthly, this court cannot invalidate the defendants' title deeds because they were obtained in accordance with the law For the above and other reasons, they pray for the dismissal of the plaintiff's suit with costs.
6. In the counterclaim, the four plaintiffs seek the following reliefs against Lucy Wanjiku Nyamu and the Land Registrar Kajiado.



- a. A revocation and or cancellation of the title deed fraudulently issued to the 1st plaintiff in respect of the suit property.
- b. A declaration that the 3rd and 4th defendants are the legal proprietors/owners of the suit property by virtue of the title deeds that they hold.
- c. An order of permanent injunction restraining the plaintiff and the Land Registry Kajiado jointly and severally whether by themselves, their servants, agents or otherwise from selling, pledging, leasing, wasting, developing or in any manner whatsoever or howsoever from interfering with or dealing with the suit property.
- d. The costs of this suit together with interest thereon at court rates from the date of filing of the suit until the date of payment in full.

The defendants' case in the counterclaim is as follows.

Firstly, the interested party is a state corporation tasked with the implementation of Government Housing Policies and Programs.

Secondly, vide a sale agreement dated 31/7/2009 the second defendant sold the suit land to the 3rd and 4th defendants.

Thirdly, the defendants have learnt that the plaintiff holds what she purports to be a genuine title deed for the suit land.

Fourthly, the 2nd defendant has never sold the suit land to any other person other than the 3rd and 4th defendants.

Fifthly, the defendants plead fraud on the part of the plaintiff and the Land Registrar Kajiado. The particulars of fraud include causing the suit land to be illegally transferred to the plaintiff, disregarding their interests and rights in the suit land and transferring the suit land to the plaintiff using improper and invalid documents.

7. In support of their case, the defendants filed the following evidence.
 - a. Witness statements by Silinkai Ole Mpidaki and Jason Kerandi Nyantino.
 - b. Copy of title deed for the suit land dated 13/2/1998.
 - c. Copy of certificate of official search dated 30/7/2009.
 - d. Copy of agreement for sale dated 3/7/2009.
 - e. Copy of title deed for the suit land dated 19/3/2018.
 - f. Copy of charge sheet in Criminal Case No 1093 of 2011.
 - g. Copy of certified proceedings in Case Number 1093 of 2011.

8. The interested party filed a statement of defence dated 31/8/2017 in which it avers as follows.

Firstly, it created a charge over the suit land as security for the repayment of a loan of KShs. 3 million advanced to the 4th defendant. Secondly, before the creation of the charge, the interested party had procured an official search on the title to the suit land which showed that the title was registered in the joint names of the 3rd and 4th defendants. Thirdly, the charge over the suit land was lawfully registered on 4/1/2011 and prior to its registration, consent to charge was obtained from the relevant land control board. Fourthly, an official search after registration of the charge confirmed its registration in favour



of the interested party on the register. The original of the charge and its counterpart are in custody of the interested party. Fifthly, the charge over the suit land as security for the loan happened in the ordinary course of business, in good faith and without notice of the alleged defect in title of the suit property. Finally, the plaintiff has no legitimate claim against the interested party and the suit against it should be dismissed with costs.

9. In support of its case, the interested party filed the following evidence.
- a. Witness statement by Martin Shiveere an accountant, with the interested party.
 - b. Copy of the charge over the suit land dated 31/2/2010.
 - c. Copy of loan application form dated 13/10/2010.
 - d. Copy of official search dated 12/11/2010.
 - e. Copy of letter of offer dated 24/11/2010.
 - f. Copy of letter of acceptance dated 3/12/2010.
 - g. Copy of application for consent of Land Control Board.
 - h. Copy of letter of consent dated 15/12/2010.
 - i. Copy of original title deed for the suit land reflecting charge registered in favour of the interested party.
 - j. Copy of official search dated 5/1/2011.
 - k. Copy of loan debtor statement dated 4/8/2011.
 - l. Copy of letter to the 4th defendant dated 22/8/2017.
10. At the trial, the plaintiff, the 2nd and 4th defendants testified. They adopted their witness statements and produced their documents before they were cross examined by counsel for the adverse parties. The last witness to testify was Miss Mwangi, Land Registrar Kajiado. Her evidence was to the effect that the records for the suit land cannot be traced at Kajiado Land Registry. The said records include the copy of register (green card) and the contents of the parcel file.
11. Counsel for the parties filed written submissions on 5/12/2013 and 2/2/2024 respectively. The plaintiff's counsel did not heed the directions given under Order 18 Rule 2 Civil Procedure Rules as to the order of filing submissions. Instead of filing last, she filed first. Since the issues identified by counsel are not at variance, I have to decide on all of them.

The plaintiff's issues are as follows.

- a. Whether the defendants obtained title to the suit property legally or illegally, fraudulently or not.
 - b. Whether the plaintiff herein is the rightful owner of the suit land.
 - c. Whether the suit property should then be cancelled and reverted back to the plaintiff.
- The defendants' issues are as follows.
- i. Whether the plaintiff's title to the suit parcel is a valid title.
 - ii. Whether the 3rd and 4th defendants are the absolute proprietors of the suit land.
 - iii. Whether the 2nd, 3rd and 4th defendants are entitled to the orders sought in their counterclaim.



- iv. Who bears the costs.
12. I have carefully considered the evidence adduced by the parties including the witness statements, documents and testimony at the trial. I have also considered the written submissions by learned counsel for the parties including the law cited therein. I make the following findings on the issues identified by learned counsel for the parties.
13. On the first of the plaintiff's issues, I find that the 3rd and 4th defendants' title was obtained fraudulently for the following reasons.
- Firstly, I am satisfied that the plaintiff's husband purchased the suit land from the 2nd defendant in the year 1998. The plaintiff has given credible and consistent evidence which is supported by a copy of the title deed issued to her on 14/5/2008. Secondly, the plaintiff has evidence of the consent of the Land Control Board and its application dated 10/3/1998. Thirdly, the plaintiff has the evidence of three copies of certificates of official search dated 19/9/2012, 6/6/2013 and 22/1/2014 all showing that she is the proprietor of the suit land. Fourthly, she acquired title to the suit land through a court process. Such a process had to authenticate the documents presented including the title deed in the name of her deceased husband Arthur Nyamu Wamwiri.
- Finally, the plaintiff had the audacity to report the 2nd defendant to the police who found that he possessed fake documents. No fraudster would report the registered owner to the police. The above outlined instances convince me beyond doubt that the plaintiff's title deed is the genuine one and the one held by the 3rd and 4th defendants is fraudulently acquired and that is why the second defendant was charged in Criminal Case No 1093 of 2011 at Kajiado Chief Magistrate's Court.
14. On the second issue, I find that the plaintiff is the rightful owner of the suit for the five reasons given in paragraph (13) above. As for the third issue, I find that the land records should be reconstructed to reflect the plaintiff as the absolute owner of the suit land. Coming to the defendants' issues, I find that the plaintiff's title is the valid one for the five reasons given in paragraph (13) above. On the second of the defendant's issues, I find that the 3rd and 4th defendants are not the lawful owners of the suit land because they purported to buy it from the second defendant when he had already sold it to Arthur Nyamu Wamwiri and after it had been transmitted to the plaintiff through Succession Cause No 2903 of 2002. Having sold the suit land to the plaintiff's husband in the year 1998, the second defendant had no valid title to the land that he could pass to the 3rd and 4th defendants.
- Regarding the third of the defendants' issues, I find that the defendants are not entitled to the orders sought in the counterclaim because they have no lawful claim to the suit land for reasons already given.
15. The plaintiff had, in prayer (c) of the plaint dated 15/3/2017 made a claim for general damages but looking at the paragraphs in the plaint as well as her witness statement and evidence at the trial, I do not see much devotion to this particular prayer in terms of evidence. The submissions dated 1/12/2023 are also silent on this particular prayer.
16. In conclusion and for the reasons already given, I enter judgment for the plaintiff against the defendants jointly and severally as prayed for in prayer (a), (b), (d) and (e) of the plaint dated 15/3/2017. I dismiss the 2nd, 3rd and 4th defendants' counterclaim with costs to the plaintiff.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 13TH DAY OF JUNE 2024.

M.N. GICHERU

JUDGE

