



**Njenga v Mwangi & 2 others (Environment & Land Case
111 of 2020) [2024] KEELC 4572 (KLR) (6 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4572 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 111 OF 2020**

**JG KEMEI, J
JUNE 6, 2024**

BETWEEN

MARGARET MUTHONI NJENGA PLAINTIFF

AND

PETER GITHINJI MWANGI 1ST DEFENDANT

KIRTISH CHANDULAL KARANIA 2ND DEFENDANT

THE DISTRICT LAND REGISTRAR, KIAMBU 3RD DEFENDANT

JUDGMENT

1. The Plaintiff filed suit on 23/11/2020 seeking the following orders:-
 - a. Declaration as the rightful and only owner of the suit property and a permanent injunction be issued against the Defendants, their agents, servants and/or representatives from further transferring the suit property and/or developing it.
 - b. The 3rd Defendant be ordered to cancel the Title Deed in Kirtish Chandunal Karania and be compelled to issue a new one under the Plaintiff's name.
 - c. Cost of this suit and interest thereon.
2. The Plaintiff averred that she is the registered owner of land Parcel Ndumberi/riabai/1788 (hereinafter the suit land). That she acquired the suit land by way of a gift from her deceased husband.
3. That on 9/2/2019 while at home some people who claimed to be surveyors entered her property purporting to fix beacons on the suit land. Alarmed by the turn of events she caused a search to be carried on the title whereupon she discovered that her land had been transferred and registered in the name of the 1st Defendant. She reported the matter to the Directorate of Criminal Investigations



- (DCI), Kiambu where a restriction was lodged on the title. A further search revealed that the land had been transferred to the 2nd Defendant without her knowledge and consent.
4. Particulars of fraud and misrepresentation are pleaded in the Plaint under paragraph 22 against the 1st, 2nd and 3rd Defendants.
 5. Vide the Statement of Defence filed on 30/5/2022 the 2nd Defendant contended that he acquired the suit land free from encumbrances and restrictions and that he is a total stranger to the claim of the Plaintiff. He denied the Plaintiff's claim and sought to put her in strict proof. The Court was urged to dismiss the suit with costs.
 6. The 3rd Defendant vide Statement of Defence filed on 3/11/2022 stated that the 1st Defendant was issued with title on 12/2/2019. In totality the 3rd Defendant denied the claim of the Plaintiff.
 7. At the hearing the Plaintiff testified as PW1. She relied on her witness statement dated 3/11/2020 as her evidence in chief and produced documents in support of her claim marked PEX No. 1 – 6.
 8. She led evidence that she is the registered owner of the suit land having inherited it through transmission from the estate of her late husband. She denied ever transferring the land to the 1st Defendant and that she discovered that the suit land was registered in the name of 1st Defendant when she carried out a search on the title. Following a complaint she lodged at the District Criminal Investigations Officer (DCIO), a restriction was registered on the title stopping any further dealings.
 9. Kirtish Chandulal Karania testified as DW1 and relied on his witness statement dated 30/5/2022 as evidence in chief. She also produced the documents marked as DEX No. 1 – 8 in support of his defence.
 10. The witness informed the Court that he purchased the land from the 1st Defendant; obtained a search which confirmed that the 1st Defendant was the registered owner and that he was not aware that there was a dispute on the land. That he complied with the law in the acquisition of the land including obtaining a spousal consent from the 1st Defendant.
 11. In cross, the witness informed the Court that the restriction had been removed by the time he purchased the land. That he did not participate in the removal of the restriction. He denied any wrong doing including fraud in the acquisition of the land.
 12. David Njenga testified as DW2 and informed the Court that he trades as a property agent and that he was instructed by the 1st Defendant to sell the land for him and thereafter introduced the 2nd Defendant to the 1st Defendant, who on seeing the property embarked on the purchase.
 13. In cross he stated that he was present when the 1st Defendant signed the Sale Agreement with the 2nd Defendant. He added that the land was bare: not occupied.
 14. Ruth Nyamogo, the Land Registrar testified as DW3. She introduced herself as the Land Registrar, Kiambu. She relied on her witness statement dated 3/11/2022 in chief and produced documents marked as DEX No. 8 in support of her defence.
 15. The witness gave a lengthy chronological history of the entries on the title with a clear emphasis that there are no transfer documents between the Plaintiff and the 1st Defendant. She absolved her office of any wrong doing. She also added that she did not have the surrendered original title in the name of the Plaintiff in the registry records. That the restriction was removed without any letter from CID who ordinarily should have moved for its removal and be notified of the same. That there was no evidence that the investigations were complete before the restriction was removed to pave way for the registration of the title in the name of the 2nd Defendant.



16. That the transfers from Plaintiff to the 1st Defendant are missing together with accompanying documents similar fate faces the transaction between the 1st Defendant and the 2nd Defendant. She conceded that there are no transfer or any accompanying documents from 1st and 2nd Defendants over the suit land.
17. Parties filed written submissions which I have read and considered.
18. Issues for determination:-
 - a. Whether the Plaintiff has proven that the 1st and 2nd Defendants acquired the suit land illegally and fraudulently.
 - b. Whether the 2nd Defendant is an innocent purchaser for value without notice.
 - c. Whether the title held by the 2nd Defendant should be cancelled.

Fraud and declaration of title

19. The Plaintiff's case is that she is the registered owner of the land having acquired it through transmission. It is not in doubt that the land measuring 0.10 acres was first registered in the name of her father in law on 22/2/1990. In 1998 it was gifted to John Njenga Wainaina, his son and the husband of the Plaintiff. Upon his death the suit land devolved to the Plaintiff via transmission. She led evidence that from 2004 that her quiet and peaceful enjoyment of her property was interrupted in 2019 when alarmed by people who entered the land claiming to be surveyors. She carried out a search in the Land's Office when she discovered that the land had been transferred to the 1st Defendant on 3/12/2004. She lodged a complaint with DCI which led to the lodgment of the restriction on 21/2/2019. It would appear that the restriction was removed on 15/10/2019 without her knowledge and the land transferred to the 2nd Defendant on 22/10/2019. A further restriction was lodged on 12/10/2020 on her instigation.
20. The 1st Defendant despite service failed to enter appearance or file a defence to the suit and therefore the Plaintiff's claim against the 1st Defendant is undefended.
21. The 2nd Defendant stated that he purchased the land from 1st Defendant. That at the time of purchase the land was free from all encumbrances.
22. The 3rd Defendant attempted to absolve itself from any blame in the transactions.
23. Fraud is defined as a knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment.
24. In the case of *Vijay Morjaria Vs. Nansingh Madhusingh Darbar & Another* [2000] eKLR, Tunoi, JA. (as he then was) stated as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”
25. Section 26 of the [Land Registration Act](#) states as follows:-
 - (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie



evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”

26. Registration of title and transfer is provided for in Law. According to Section 44(1) of the [Land Registration Act](#) every instrument affecting any disposition in land shall be in writing and duly executed by parties to it. Further Section 44(5) provides as follows:-

“The transferee shall in addition to executing the instrument, attach the following—

- a. a copy of an identity card or passport; and
- b. a copy of a Personal Identification Number certificate;
- c. passport-size photographs;
- d. where applicable, a marriage certificate; or
- e. a copy of the certificate of incorporation, in the case of a corporate entity; or such other identification documents as the Cabinet Secretary may prescribe.”

1. Regulation 22(1) of Land Registration (General) Regulations provides as follows:-

“Documents in support of applications

- 1. Unless the Registrar otherwise directs, every application for registration shall be accompanied by—
 - a. all such original title documents or other documents relating to the land or the interest in land;
 - b. a cadastral plan (where applicable) approved by the office or authority responsible for land survey;
 - c. such other documents as the Registrar may reasonably require for purposes of clearly identifying the land or interest in land; and
 - d. a list, in duplicate, specified in Form LRA 9 set out in the Sixth Schedule of all the documents lodged with the Registrar.”

28. In addition to that Regulation 49 of the Land Registration (General) Regulations lists the following documents:-

“49. Requirements for transfer

- 1. Subject to section 37(1) of the Act an application for the transfer of any interest inland shall be in Form LRA 33 set out in the Sixth Schedule.



2. An application under paragraph (1) shall be supported by—(a) the original title documents;
 - b. where applicable, a land rent clearance certificate;
 - c. a land rates clearance certificate;
 - d. where applicable, the consent of the head lessor;
 - e. any consent required for registration unless a particular consent has been endorsed on the instrument of transfer;
 - f. where applicable, a form for Valuation of Stamp Duty, duly filled and approved by a government valuer; and
 - g. any other document as may be required under the Act, these Regulations or any other written law.”

29. In this case the Plaintiff adduced evidence that she has never sold or transferred the land to the 1st Defendant or any other person. Infact she holds her original title.

30. It is the law that before a transfer is registered the following documents must be presented to the Land Registrar for authentication, approval and registration; key component is that stamp duty must be paid on transfer among other charges. I have considered the evidence of the 2nd Defendant and the Land Registrar who both agree that these documents are not available. There is therefore no evidence to show who really transferred the land to the 2nd Defendant and on what basis.

31. Neither the 1st nor the 2nd Defendants produced any of the requisite documents in law to warrant registration and issuance of title in their names. Evidence was led by DW1 that before he purchased the land there was a restriction but same was removed. A perusal of the green card shows a restriction lodged on 21/2/2019 was removed on 15/10/2019. The fact of the existence of a restriction was enough notice to the 2nd Defendant of the presence of a dispute. DW3 failed to show evidence of a lawful removal of the restriction. She admitted that she did not have any evidence of DCI removing the restriction or the circumstances in which the restriction was lawfully removed. The Court finds that the removal of the restriction was to aid the fraudulent transfer of the land to the 2nd Defendant to defeat the interest of the Plaintiff.

32. Save for the Sale Agreement and the title, the 2nd Defendant did not present any transfer, Land Control Board consent, stamp duty transfer or any other compliance with the provisions of Regulations 22 and 49 of the Land Registration (General) Regulations.

33. How did the 3rd Defendant register a title in the absence of compliance with the law? DW3 led evidence that there are no documents to support any transfer of the suit and from the Plaintiff to the 1st Defendant and from the 1st Defendant to the 2nd Defendant. The Court would like to agree with the sentiments of the Court of Appeal in the case of Arthi Highway Developers Limited Vs. West End Butchery Limited & 6 Others (2015)eKLR where the Court stated:-

“There is no legal basis for the approach adopted by the 4th Defendant (Registrar General) in this case of “see no evil, hear no evil and say no evil” in terms of verification of documents presented to it for public consumption. The very least that the Companies Registry should do is to insist on evidence that the law has been followed when accepting documents presented to it. If the companies Registry does not do so it risks being an unwitting player and facilitator of company identity theft and fraud, as happened in the case herein. It is therefore my finding that there was laxity on the part of the Companies Registry to this



extent, and that either by way of omission or commission it did contribute to the fraud perpetrated by the 2nd and 3rd Defendants.” (Emphasis added)

34. The Court finds that the 3rd Defendant cannot be excused from laxity and the glaring fraud perpetuated in her office in aid of the illegal transfer of the land of the Plaintiff.

Bona fide purchaser

35. The Court finds that there is overwhelming evidence to support evidence of fraud on the part of the 1st Defendant. The defence of bonafide is therefore not available to the 2nd Defendant. The 2nd Defendant did not acquire any valid interest capable of founding a title in his favour.

Cancellation of title

36. The Court has found that the creation of the title in the name of the 1st and 2nd Defendant is a product of fraud. The title therefore in the name of the 2nd Defendant cannot be allowed to stand. Mandated by the provisions of Section 80 of the *Land Registration Act*, I order the title be and is hereby cancelled forthwith.

37. Final orders and disposal

- a. The Plaintiff's case succeeds.
- b. A declaration be and is hereby made that the Plaintiff is the rightful and only owner of the suit property and a permanent injunction be issued against the Defendants, their agents, servants and/or representatives from further transferring the suit property and/or developing it.
- c. The 3rd Defendant be and is hereby ordered to cancel the Title Deed in kirtish chandunal karania and be compelled to issue a new one under the Plaintiff's name.
- d. The 3rd Defendant is hereby ordered to cancel the entries on the green card namely 6 – 12 forthwith.

38. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 6TH DAY OF JUNE, 2024 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Ms. Ndichu HB Mburu Machua for Plaintiff

1st Defendant – Absent

Ms. Nganga HB Kamuiru for 2nd Defendant

3rd Defendant – Absent

Court Assistants – Phyllis & Oliver

