



**Mutava v Karanja & another (Environment & Land Case
E074 of 2022) [2024] KEELC 5558 (KLR) (31 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5558 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E074 OF 2022**

CA OCHIENG, J

JULY 31, 2024

BETWEEN

ONESMUS KIIO MUTAVA PLAINTIFF

AND

PETER NJOROGE KARANJA 1ST DEFENDANT

MALILI RANCH LIMITED 2ND DEFENDANT

JUDGMENT

1. By a Plaint dated the 12th September, 2022, the Plaintiff sought the following Orders against the Defendants:-
 - a. A declaration that the suit property known as Agricultural Plot No. 1569 (Konza North/Block 2/Malili 428) was fraudulently obtained by the 1st Defendant and the resultant title deed is therefore null and void.
 - b. A declaration that the Plaintiff is the lawful and legitimate owner of the suit property known as Agricultural Plot No. 1569 (Konza North/Block 2/Malili 428).
 - c. An order for cancellation/revocation of the 1st Defendant's title deed to the suit property known as Agricultural Plot No. 1569 (Konza North/Block 2/Malili 428) and the 2nd Defendant be directed to facilitate the issuance of a new title deed for the said suit property in favour of the Plaintiff.
 - d. A permanent injunction be issued restraining the 1st Defendant whether by himself and/or agents from entering upon, remaining upon, taking possession, selling, constructing, trespassing, alienating and/or otherwise dealing with Agricultural Plot No. 1569 (Konza North/Block 2/Malili 428).
 - e. Damages and interest at court rates.



- f. Costs of this suit together with interests at court rate from the time of filing the suit.
- g. Any other or further reliefs as this Honourable Court may deem appropriate to grant.
2. The 1st Defendant though duly served vide substituted service in the Daily Nation Newspaper dated the 30th November, 2022, failed to enter appearance and file a Defence.
3. The 2nd Defendant filed its Statement of Defence where it denied the averments in the Plaint except the descriptive. It denied the particulars of conspiracy, collusion and fraud attributed to the 2nd Defendant. It explained that the purported Seller Onesmus Kiiio Mutua is unknown to it. Further, that it did not authorize the transaction between Onesmus Kiiio Mutua and the 1st Defendant. It contended that the 1st Defendant colluded with unscrupulous official/its former secretary, to alter the records in favour of one Onesmus Kiiio Mutua towards illegally disposing of the suit land to the 1st Defendant. It insisted that it was not a beneficiary of any illegal activities between the 1st Defendant and itself. It averred that upon request by the Plaintiff, it volunteered all the information including documents relating to the illegal sale and transfer which illegality only came to its knowledge when the Plaintiff visited its offices. It confirmed that pursuant to the documents in its records, the suit land belongs to the Plaintiff.
4. The matter proceeded for hearing where the Plaintiff and the 2nd Defendant each called one witness.

Evidence of the Plaintiff

5. The Plaintiff as PW1 adopted his witness statement and produced his documents. He testified that he has been a member No. 0741 with the 2nd Defendant, since 1987, which allocated to him Agricultural Plot No. 1569 hereinafter referred to as the 'suit land' as well as a commercial plot. He claimed to be in possession of the suit land from the time of allotment to date as he awaited for his title deed to be processed. It was his testimony that without his knowledge or consent, the 1st Defendant colluded with the officials of the 2nd Defendant to fraudulently sell, transfer and register the suit land being Konza North/Block 2/Malili 428 in favour of the 1st Defendant. He explained that the 1st Defendant purported to purchase the suit land with approval of the 2nd Defendant, from one Onesmus Kiiio Mutua who surprisingly possesses an identity card with a similar number (3502741) as his. Further, he is a stranger to the said Onesmus Kiiio Mutua and insists that the documents relied upon by the Defendants' to dispose of the suit land were clear forgeries.
6. During cross-examination, he confirmed that it is the 2nd Defendant who wrote to him on 13th March, 2006, to ballot for his plot, but when he went to their offices, he was informed his plot had been transferred. Further, that he received a Transfer Receipt from the 2nd Defendant that confirmed someone from their office colluded to transfer the suit land to a third party. He insisted that the 2nd Defendant authorized the transfer by receiving the transfer fees.
7. The Plaintiff produced the following documents as exhibits: Identity Card No. 350XXXX; Membership Card No. 07XXXX; Shares Payment Receipt; Share Certificate; Letters dated 21st May, 1988, 13th March, 2006 and 28th July, 2022; Letter of Allotment dated 27th March, 2007; Ballot Cards; Search dated 7th September, 2022; 1st Defendant's ID Card Number 350XXXX; Defendant's Allotment Letter dated 27th July, 2006; Defendant's Transfer Payment Receipt dated 15th June, 2010; Defendant's Ballot Card; Agreement for Sale dated 7th June, 2010 and 1st Defendant's Identity Card.

Evidence of the 2nd Defendant

8. DW1 Leonard Kitua, a director of the 2nd Defendant in his testimony confirmed that the Plaintiff was its member No. 07XXXX, having purchased shares from them and owned a Share Certificate to that



effect. He explained that the Plaintiff indeed balloted and was allocated Agricultural Plot No. 1569 and a commercial Plot No. 2335. It was his testimony that the 1st Defendant colluded with a former secretary of the 2nd Defendant one Mr. Munguti, to alter records in favour of one Onesmus Kiiio Mutua towards illegally disposing of the suit land, to the 1st Defendant, vide Sale Agreement dated the 7th June, 2010. He testified that the 2nd Defendant is a stranger to the purported sale of the suit land by one Onesmus Kiiio Mutua. Further, that the transaction between Onesmus Kiiio Mutua and the 1st Defendant herein, was not authorized by the 2nd Defendant. He contended that the 1st Defendant was not a beneficiary of the illegal actions between the 1st Defendant and the company official and neither did it sanction it. He reiterated that pursuant to the documents held by the 2nd Defendant, the suit land belongs to the Plaintiff.

9. The 2nd Defendant produced the following documents as exhibits: Copy of Copy of Allotment Letter for Commercial Plot Number 2335 and Agricultural Plot No. 1569 dated 27th March, 2007; Copy of Membership Card No. 74XXXX to Onesmus Kiiio Mutava dated 3rd September, 2005; Copy of Share payment receipt dated 21st September, 1987; Copy of Letter dated the 21st May, 1988; Copy of Ballot Card for Agricultural Plot No. 1569; Copy of ID Card belonging to Onesmus Kiiio Mutua; Copy of 1st Defendant's Allotment Letter dated 27th July, 2006; Copy of 1st Defendant's Payment Receipt dated 15th June, 2010; Copy of Sale Agreement dated the 7th June, 2010 and Copy of 1st Defendant's ID.

Plaintiff's Submissions

10. The Plaintiff in his submissions relied on his pleadings, witness testimony including exhibits and insisted that the 1st and 2nd Defendants indeed colluded to fraudulently transfer the suit land to the 1st Defendant. Further, that the 2nd Defendant had not disputed that the title to the suit land issued to the 1st Defendant was illegally done by one of its officials Mr. Munguti who altered the records in favour of one Onesmus Kiiio Mutua. He submitted that he was hence entitled to the orders sought. He argued that his allegations of fraud had not been controverted by the Defendants. To buttress his averments, he relied on the following decisions: Paulo Kipserem A Chepkwony v Annah Chebet Serem (2020) eKLR which cited in approval Arthi Highway Developers Limited v WestEnd Butchery Limited & 6 Others (2015) eKLR and Paul Muira & Another v Jane Kendi Ikinyua & 2 Others (2014) eKLR.

2nd Defendant's Submissions

11. The 2nd Defendant in its submissions provided a background of the dispute herein, relied on the evidence presented and contended that the Plaintiff had not proved fraud against it. It insisted that based on the totality of the evidence presented, the Plaintiff had not satisfied the ingredients of collusion and fraud against it. It further submitted that the Plaintiff was entitled to the orders sought as he is the rightful owner of the suit land. To buttress its averments, it relied on the Uganda Court of Appeal case of Katende vs Haridas & Company Limited (2008) EA 173 as cited with approval in Ratilal Ghela Shah v Darius Mwitiri Kirimi, Land Registrar, Kwale (2021) eKLR.

Analysis and Determination

12. Upon consideration of the Plaintiff's Defence, testimonies of the witnesses, exhibits and rival submissions, the following are the issues for determination:
 - a. Who is the rightful owner of the suit land.
 - b. Whether the Plaintiff is entitled to the orders as sought in the Plaintiff's Defence.

As to who is the rightful owner of the suit land.



13. The Plaintiff as PW1 testified that he was member No. 0741 with the 2nd Defendant, since 1987, which allocated him the suit land. He produced a receipt to prove payment of shares as well as a Share Certificate. PW1 explained that the 1st and 2nd Defendants' colluded and defrauded him of the suit land. The 1st Defendant though duly served failed to enter appearance to rebut the Plaintiff's averments. I hence find that the Plaintiff's averments as relates to the 1st Defendant is uncontroverted, hence admitted. As for the 2nd Defendant, DW1 in his testimony admitted that the Plaintiff was indeed a member of the 2nd Defendant and was allocated the suit land. Further, that the Plaintiff is indeed the rightful owner of the said suit land. The 2nd Defendant explained that it was one of its former officials a Mr. Munguti who colluded with one Onesmus Kiiio Mutua and they changed the Plaintiff's records culminating in the suit land being sold to the 1st Defendant. Further, that the said Onesmus Kiiio Mutua possesses an identity card with a similar number (3502741) as the Plaintiff's.
14. The 2nd Defendant denied authorizing the transfer of the suit land to the 1st Defendant. On perusal of the documents presented by the parties herein, it is evident that the 1st Defendant's title was pegged on the Plaintiff's documents. From the evidence tendered by both parties, it emerged that the 1st Defendant procured a title for the suit land being Konza North/Block 2/Malili 428. The Plaintiff claims there was fraud as the 1st Defendant colluded with the 2nd Defendant to take away the suit land from him.
15. In the case of Arthi Highway Developers Limited v West End Butchery Limited & 6 Others (2015) eKLR, the Court of Appeal held as follows:-

“It is common ground that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt. One of the authorities produced before us has this passage from Bullen & Leake & Jacobs, Precedent of pleadings 13th Edition at page 427:

“Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings, and though it is not necessary that the word fraud should be used, the facts must be so stated as to show distinctly that fraud is charged (Wallingford v Mutual Society (1880) 5 App. Cas. 685 at 697, 701, 709, Garden Neptune V Occident [1989] 1 Lloyd's Rep. 305, 308). The statement of claim must contain precise and full allegations of facts and circumstances leading to the reasonable inference that the fraud was the cause of the loss complained of (see Lawrence V Lord Norreys (1880) 15 App. Cas. 210 at 221). It is not allowable to leave fraud to be inferred from the facts pleaded and accordingly, fraudulent conduct must be distinctly alleged and as distinctly proved (Davy V Garrett (1878) 7 ch.D. 473 at 489). “General allegations, however strong may be the words in which they are stated, are insufficient to amount an averment of fraud of which any court ought to take notice.”

16. While in the case of Dr. [Joseph Arap Ngok vs. Justice Moiwo Ole Keiwua & 5 Others, Nai. Civil Appeal No. 60 of 1997](#) the court categorically declared that:-

“Section 23(1) of the then Registration of Titles Act (now reproduced substantially as Section 25 and 26 of the [Land Registration Act](#)) gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the titleholder under the Act. It is our law and law takes



precedence over all other alleged equitable rights of title. In fact the Act is meant to give such sanctity of title, otherwise the whole process of registration of Titles and the entire system in relation to ownership of property in Kenya would be placed in jeopardy.”

17. Based on the evidence before me while associating myself with the quoted decisions, I find that since the 1st Defendant failed to controvert the Plaintiff’s averments while the 2nd Defendant admitted that the Plaintiff is the rightful owner of the suit land as per their records, I find that the Plaintiff is indeed the absolute proprietor of the suit land.
18. On validity of title held by the 1st Defendant, I wish to make reference to Section 26(1) of the [Land Registration Act](#) which provides as follows:

“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.” Emphasis mine
19. From the legal provisions cited above, I hold that since the 1st Defendant’s title was acquired using forged documents, the root of his title is fettered and he cannot be deemed to be a bona fide purchaser for value. In the circumstances, while relying on Section 80 of the [Land Registration Act](#), I find that the 1st Defendant’s title cannot stand and should be cancelled.
20. In the foregoing, I find that the Plaintiff is indeed entitled to the orders as sought in the Plaint and will proceed to enter Judgment in his favour as against the Defendants’ and make the following final orders:-
 - a. A declaration be and is hereby issued that the suit property known as Agricultural Plot No. 1569 (Konza North/Block 2/ Malili 428) was fraudulently obtained by the 1st Defendant and the resultant title deed is therefore null and void.
 - b. A declaration be and is hereby issued that the Plaintiff is the lawful and legitimate owner of the suit property known as Agricultural Plot No. 1569 (Konza North/Block 2/Malili 428).
 - c. An order be and is hereby issued to the Land Registrar, Machakos for cancellation/revocation of the 1st Defendant’s title deed to the suit property known as Agricultural Plot No. 1569 (Konza North/Block 2/Malili 428) and the 2nd Defendant be directed to facilitate the issuance of a new title deed for the said suit property in favour of the Plaintiff.
 - d. A permanent injunction be and is hereby issued restraining the 1st Defendant whether by himself and/or agents from entering upon, remaining upon, taking possession, selling, constructing, trespassing, alienating and/or otherwise dealing with Agricultural Plot No. 1569 (Konza North/Block 2/Malili 428).
 - e. Costs of this suit together with interests at court rate from the time of filing the suit is awarded to the Plaintiff to be equally borne by the Defendants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 31ST DAY OF JULY, 2024



CHRISTINE OCHIENG

JUDGE

In the presence of:

Otinga for Plaintiff

Ms. Thiongo for 2nd Respondent

Court Assistant – Simon/Ashley

MKS. ELC. CASE NO. E074 OF 2022 – Judgment Page 4

