



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL APPEAL NO. 505 OF 2010

STEPHEN NDIRANGU KINYANJUIAPPELLANT

VERSUS

ESTHER NJAMBI KINUTHIARESPONDENT

(From the Original Suit No. 568 of 2002 at Thika Chief Magistrate's Court)

JUDGMENT

At the centre of this dispute is a parcel of land known Title No. Thika Municipality/Block/2/630. The respondent herein sued the appellant and another for an order of injunction to restrain them from claiming or dealing with the said parcel of land and cancellation of the title.

The appellant countered the respondent's claim by denying any allegations of fraud in obtaining the title in question, and stated that he bought the land from one Jane Waithera Kangethe who was the 1st defendant in the lower court.

The evidence adduced in the lower court showed that there was a contest of ownership between two people bearing the same name but holding different identity cards. One was Jane Waithera Kangethe holder of ID card No. 5710354/68 and the other was Jane Waithera Kangethe of ID card No. 3586296/66.

The respondents evidence was that she purchased the land from Jane Waithera Kangethe of ID no. 5710354/68 of P.O. Box 1351 Thika at the price of Khs. 14,000/=.

They entered into an agreement for sale which was also produced in evidence. She was also given a power to attorney by the vendor which she also produced in evidence. There were some documents which included the letter of allotment issued by the local authority. She then proceeded to the council offices and paid the rates whereupon she was shown the parcel of land and given a beacon certificate.

Upon taking possession she started some construction but fell ill and that is when the appellant herein

started claiming the same parcel of land. This led to the filing of the suit in the lower court.

The appellant was restrained from continuing with the construction. The first defendant in the lower court, Jane Waithera Kangethe is the lady who sold the parcel of land to the respondent. She confirmed in all material particulars the evidence of the respondent and in effect re-affirming the respondent's claim to the land.

The appellant also gave evidence in the lower court where he told the court that he purchased the parcel of land from Jane Waithera Kangethe holder of ID card No. 3586296/66. He also produced an agreement between the two and testified that he obtained a title deed in respect of that property.

He constructed a house thereon and subsequently came to know that the respondent had sued him on allegation that he had obtained the land fraudulently.

The appellant called Jane Waithera Kangethe who allegedly sold the land to him. After receiving evidence from the witnesses, the learned trial magistrate found that the respondent had proved her case against the defendants on the basis of fraud committed by Jane Waithera Kangethe holder of ID No 3586296/66 who conferred a benefit upon the appellant in the form of a parcel of land which she never owned.

The learned trial magistrate observed and correctly so, that the appellant was a beneficiary of a bad title. That being the case, the court having notice of the fraud that led to the first registration could interfere with that registration.

As the first appellate court, I have considered the evidence adduced in the lower court and come to the same conclusion. The lady who sold the land to the appellant did not have a valid title capable of being passed to the appellant. The learned trial magistrate was correct therefore in her analysis of the evidence, especially on the identity of the respondent and defence witness No. 2 in the lower court. She cannot be faulted at all.

The appellant cannot find refuge in the provisions of Sections 27 and 28 of the Registered Land Act Cap 300 Laws of Kenya, in view of the evidence adduced in the lower court. In my judgment there is no merit in this appeal which is hereby dismissed with costs to the respondent.

Orders accordingly

Dated, signed and delivered at Nairobi this 15th Day of June, 2016.

A. MBOGHOLI MSAGHA

JUDGE



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