



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC. CASE NO. 874 OF 2017

NKENA OLE KESHU.....PLAINTIFF

VERSUS

METEKI OLE TIIMA.....DEFENDANT

JUDGMENT

By a Plaint dated 28th September, 2017 the Plaintiff sought for the following orders:

- a. An order against the Kajiado North Land Registrar to cancel the title number Kajiado/Kipeto/808.*
- b. A permanent injunction against the 1st Defendant from dealing in any way with title number Kajiado/Kipeto/808.*
- c. A declaration that the Plaintiff is the absolute proprietor of Kajiado/Kipeto/1447 and Kajiado/Kipeto/1448 sub-division of Kajiado/Kipeto/808; and;*
- d. Cost of the suit with interest at court rates until payment in full.*

The Defendant was duly served and only filed a Memorandum of Appearance dated the 8th November, 2017 but failed to file a Defence to controvert the Plaintiff's averments.

Evidence of the Plaintiff

The Plaintiff as PW1 stated that he purchased land parcel number Kajiado/Kipeto/808 from the Defendant in 1992. He explained that after purchase, he proceeded to subdivide the said land into Kajiado/Kipeto/ 1447 and 1448 after which the respective title deeds were issued to him and the mother title cancelled. He confirmed having moved to the said parcel of land and constructed his matrimonial home therein. It was his testimony that sometime in 2012 unknown people came to the land with a copy of title for Kajiado/Kipeto/808 purporting to have obtained the same from the Defendant. He confronted the Defendant but he denied the same and accused the relatives of fraudulent acts. He testified that the aforementioned acts of the Defendant continued until 2015 when he conducted a search which confirmed the Defendant as the owner of Kajiado/Kipeto/808. He sought for intervention from the Land Registrar, who confirmed from the District Surveyor that there was indeed a mutation but records were missing. He further sought intervention of the DCI Ngong but the Defendant has persisted in his actions of misrepresenting to people that he is the owner of Kajiado/Kipeto/808 which ceased to exist after he sold it. The Plaintiff produced the following documents as exhibits: Copies of Title for Kajiado/Kipeto/1447 and 1448; Copy of Mutation for Kajiado/Kipeto/1447 and 1448 resurveyed; Copy of Official Searches for Kajiado/Kipeto/1447 and 1448; Letter from Geomatics Survey dated 15th April, 2016; Letter from District Land Registrar, Kajiado North dated the 26th January, 2016; Letter dated the 14th April, 2016 addressed to the District Land Registrar, Kajiado North from the National County Surveyor, Kajiado County; Letter dated the 8th June, 2016 from the District Land Registrar, Kajiado North; Letter dated the 8th January, 2017, from the District Land Registrar, Kajiado North and Letter dated the 9th February, 2017, from the District Land Registrar, Kajiado North.

Plaintiff's Submissions

The Plaintiff in his submissions reiterated his claim and contended that since the Defendant failed to file a Statement of Defence as required Under Order 7 Rule 1, an interlocutory judgement was entered against him on 5th March, 2018 after which the suit was set down for formal proof. The Plaintiff reiterated that he purchased, sub-divided and transferred the suit land into his name lawfully. Further, that he had proved that he was the registered owner of Kajiado/Kipeto/1447 and 1448 respectively by producing title deeds and official searches.

To buttress his averments he relied on the case of *Kenya Pipeline Company Limited v Mafuta Product Limited [2014] eKLR*.

Analysis and Determination

Upon consideration of the Plaintiff, Witness Testimony, Exhibits and Submissions, the issue for determination is whether the Plaintiff is entitled to the orders sought in the Plaintiff.

The Plaintiff in his evidence confirmed he purchased the land known as Kajiado/Kipeto/808 measuring approximately 32.8 hectares, which he sub-divided into Kajiado/Kipeto/1447 and 1448 measuring approximately seventeen point four (17.4) Hectares and (15.4) Hectares respectively which properties are now registered in his name. It emerged that the Plaintiff set up a matrimonial home on the said lands and has cultivated the remaining portion for more than three decades.

It further clearly emerged that the Defendant had made numerous misrepresentations to unsuspecting members of public purporting to be in possession of the suit land and has frustrated efforts to resolve the matter amicably. The Defendant never filed any Defence nor appeared in court to controvert the Plaintiff's averments.

The Plaintiff sought for a declaration that he is the owner of the two subdivisions from the suit land and sought for cancellation of the title held by the Defendant. I note the Plaintiff has held his titles for three decades and from the evidence tendered, it is clear that he is indeed a bona fide purchase for value. Section 24 (a) of the Land Registration Act stipulates as follows:

'subject to this Act, the registration of a person as a proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.....'

In the case of *Willy Kipsongok Morogo v. Albert K. Morogo (2017) eKLR* the Court held as follows: **'the evidence on record shows that the suit parcel of land is registered in the names of the Plaintiff and therefore is entitled to the protection under Sections 24, 25 and 26 of the Land Registration Act.'**

While in the case of *Joseph N.K. Arap Ng'ok V Moiyo Ole Keiwua & 4 Others [1997] eKLR*, where the Court of Appeal held that

"Once one is registered as an owner of land, he has absolute and indefeasible title which can only be challenged on grounds of fraud or misrepresentation and such is the sanctity of the title bestowed upon the title holder."

Further, in Civil Appeal No. 246 of 2013 *Arthi Highway Developers Limited vs. West End Butchery Limited and Others*, the Court of Appeal expressly stated thus:

"Section 23(1) of the then Registration of Titles Act (now reproduced substantially as Sections 25 and 26 of the Land Registration Act set out below) 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 title holder 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."

In associating myself with the cited decisions, the legal provisions cited above as well as the evidence before me, I find that the Plaintiff is indeed the absolute proprietor of land parcel number Kajiado/Kipeto/808 which was subdivided into

Kajiado/Kipeto/1447 and 1448 and hence entitled to protection of the law in accordance with the provisions of Section 24, 25 and 26 of the Land Registration Act.

On the issue of cancellation of title, I wish to refer to Section 80 of the Land Registration Act which provides as follows:

- ‘(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.*
- (2) The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.’*

Since the Defendant never controverted the Plaintiff’s averments that he sold the suit land to the Plaintiff. Further, since the Plaintiff holds title to the resultant sub-divisions from the suit land, I find that he is indeed entitled to orders sought for rectification of the Defendant’s title and will proceed to do so.

On the issue of a permanent injunction, it is trite that the same has to be proved. From the pleadings as well as evidence tendered in court, I note the Plaintiff resides on the suit land which has since been subdivided. Further, that the said subdivisions are registered in his name. It is trite that in instances where the Plaintiff seeks a permanent injunction, he has to establish a prima facie case and based on the principles enshrined in the celebrated case of *Giella v Cassman Brown Co. Ltd 1973 E.A. 358*, I find that the Plaintiff has indeed established the same as against the Defendant, to warrant the said orders of a permanent injunction.

It is against the foregoing that I find the Plaintiff has proved his case on a balance of probability and will proceed to enter Judgment in his favour as against the Defendant and make the following final orders:

- a. An order be and is hereby issued directing the Land Registrar Kajiado North to cancel the title number Kajiado/Kipeto/808 held by the Defendant.*
- b. A permanent injunction be and is hereby issued against the Defendant from dealing in any way with title number Kajiado/Kipeto/808.*
- c. A declaration be and is hereby issued that the Plaintiff is the absolute proprietor of Kajiado/Kipeto/1447 and Kajiado/Kipeto/1448 which are resultant sub-divisions of Kajiado/Kipeto/808;*
- d. Cost of the suit is awarded to the Plaintiff.*

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 20TH DAY OF DECEMBER, 2021

CHRISTINE OCHIENG

JUDGE



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