Case Number:	Civil Suit 59 of 1994
Date Delivered:	28 Apr 1994
Case Class:	Civil
Court:	High Court at Mombasa
Case Action:	Ruling
Judge:	Isaac Charles Cheskaki Wambilyangah
Citation:	GOLDEN SEA MAMBRUI LTD & ANOTHER v JOSEPH KASENA YERI [1994] eKLR
Advocates:	-
Case Summary:	**[Ruling] Land Law-dispute as to ownership-**where the suit properties were registered in the names of the plaintiffs having been purchased for valuable consideration from the original owners-defendant claiming that he had for a long time occupied these plots and that the Government should have allotted them to him instead of the original owners-injunction against the defendants barring them from trespassing-whether the plaintiff proved established a *prima facie* case
Court Division:	Civil
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Allowed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-

Sum Awarded:	-

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL SUIT NO. 59 of 1994

GOLDEN SEA MAMBRUI LTD..... PLAINTIFF

GOLDEN BEACH MAMBRUI LTD..... ..... PLAINTIFF

-VERSUS-

JOSEPH KASENA YERI..... DEFENDANT

RULING

This litigation concerns plots No. 641 Mambrui Kilifi andPlot No. 642 Mambrui Kilifi. Currently they are registered in the names of the plaintiffs having been purchased for valuable consideration from the original owners. The defendant contends that he had for a long time occupied these plots and that the Government should have allotted them to him instead of the original owners. He also alleges that the law governing the sale transaction involving agricultural land between the original owners and the current registered owners was ignored or contravened and that this aspect renders those sale transactions null and void. To this later effect he has annexed the purported copy of minutes of the Kilifi Land Control Board with a view of demonstrating that this sale transaction was never presented to the Board and that the failure to do so plainly constituted a breach of the imperativeprovisions of the Land Control Act which applied to these 2, particular parcels of land.

In order to put the issue of original ownership of theplots in some perspective I find it eminently pertinent toreproduce here parts of the submissions made by Mrs. Khaminwain the course of arguing in this application. She said thefollowing in reference to tracts land such as the one inthis case:

"The land is just there. It is just there.' It isvacant. If anyone has an interest he has to make anapplication to the court of the recorder. Therecorder adjudicates the land. So this was notGovernment land. It was just there. The respondentwas using the land as other squatters were visingit. The defendant,then started acquiring the land.The land was vacant until this transaction started."

It is also relevant to notice that the documents filed by thedefendant reveal that he was once a member of parliament forthe area where the plots are situated. It should thus beassumed that his level of understanding the procedure to befollowed in this matter was superior to that of most of theother squatters. One therefore expert him to invoke the rightprocedure to which his advocate has referred' in his bid toacquire the plots. But in paragraph 8 of his replyingaffidavit in this application he deponed:

"I have always occupied these plots when I was a member of Parliament in this constituency and have carried out development over the period."

It is difficult to understand why a man of his high calibrewould embark on developing a piece of land over which he hadnot yet acquired any proprietary rights.

His documents reveal a further point namely, that in 1992 heinitiated a process of acquiring the plots by obtaining arecommendation in his favour from the Chief of MagariniLocation.

He proceeds on to show in the statement filed in the case No.641 of 1992 paragraph (g) that he applied to the Commissionerof Lands to be issued with titles in respect of the plots onwhich he occupied." He says that he made this application byhis letter dated 25th of February 1992. So it is clear thateven he himself did not channel his application to a recordercontemplated by the Land Titles Act Cap.282. He clearly alsoaddressed his application to the Commissioner of Lands. I amcertain that if his application to the Commissioner of Landshad been successful, he would not have turned round andcontended that after all his own application had beendefective. That would have been a bizarre, situation. Thequestion is whether he is now entitled to challenge theallotment in favour of the original owners on the ground ofwant of improper procedure in acquiring the titles.It is clear that he has attacked the alleged non-compliance ofthe provisions of the Land Titles Act, which he himself had deliberately also ignored, solely because his similarapplication to the Commissioner of Lands was unsuccessful...Therefore this is not a bona-fide application. It is actuatedby evident malice: the defendant's reasoning is that since hefailed to get the land allocated to him then nobody else shouldget it.

The next ground of the defendant's challenge, as I havesaid, relates to the provisions of the Land Control Act. Heargues that the sale between the original owners and theplaintiffs was never consented to by the local Divisional LandControl Board.

It is true that a. transaction of sale involving anagricultural land must be consented to by the local DivisionalLand Control Board; otherwise the sale transaction is null and void. See S.6 of the Act. The defendant has herein exhibited what he purports to be a copy of the minutes of the Board andpoints out that the sale transaction by which the plaintiffsbecame the registered owners of these suit plots does notfeature anywhere. His advocate argued that it should thus beinferred from the document that the transactions were notpresented before the land control Board, and that the lettersof consent with which the transfers were registered must havebeen forged.

In the first place I have no means of knowing the authenticity of the alleged minutes of the Board which havebeen exhibited in these proceedings. They are unsigned andundated. The document is not even certified to be the truecopy of the original. I therefore do not derive any useful information from this dubious document; it is not of any-evidential value.

Moreover, at any rate, the allegation is of such a seriousnature that I would have expected more concrete informationabout it. Secondly, I hold that the defendant does not havethe right in law to complainant On this particular aspect. It hasto be borne in mind that the sale between the original ownersand the plaintiffs was concluded after the defendant's effortto acquire the plots had ended in vain. He had thus ceased tohave legal interest in them. For reasons which I have alreadydiscussed it is inconceivable that he would succeed in hisefforts to have the allotment of the land to the originalowners annuled.

But the most important aspect of this case is that theplaintiffs are purchasers of the plot for valuableconsideration. Having perused the plaintiff's pleadings in thetwo cases I am unable to discover any pointer to the suggestionthat they (the plaintiffs) knew or had reason to know that thetitles of the original owners' were defective nor that theywere guilty accomplices to a fraudulent scheme.It is settled law that such purchaser's title can not bechallenged. In this regard it is relevant to refer to S. 23(1)of the Registration of Titles Act Cap 281 which provides:

23(1). The certificate of title issued by theRegistrar to the purchaser of land upon transfer ortransmission by proprietor thereof shall be taken by 6all courts as conclusive evidence that the personnamed therein is proprietor of the land is theabsolute and indefeasible owner thereof subject toencumbrances, easements, restrictions and conditionscontained therein and the title of that proprietorshall not be subject to challenge except on theground of fraud or misrepresentation to which he isproved to be a party".This provision clearly applies to the facts of this case. Ifthe plaintiffs had been a party to fraud or misrepresentationleading to their being issued with the certificates of title,then the same has not been pleaded within the terms of Order VIrule 8(1) which requires the particulars misrepresentation orfraud to be pleaded.

In the ultimate analyses. I hold that the defendant'sclaims over the suit properties are totally misconceived. Hisassertions in both cases as I have endeavoured to show aremerely frivolous and vexatious. His case is thus anon-starter. It can not amount to a prima facie case withprobability of success. The plaintiffs intend to develop theirproperties. They have a huge sum of money at their disposalfor the projects. In matters of injunctions the balance ofconvenience favours a registered owner. I have alreadyadverted to the defendant's lack of bona fides in the entirematter. He would only Be too happy to cause the plaintiffs allsorts of inconvenience and loss.

Upon all the foregoing reasons I grant a mandatory injunction against the defendant as sought in the ChamberSummons dated the 1st February 1994.

Dated and Delivered on the 28th April 1994

I.C.C.WAMBILYANGAH

JUDGE