



Kiruri v Land Registrar, Kajiado & another (Environment & Land Case E035 of 2023) [2024] KEELC 5339 (KLR) (11 July 2024) (Judgment)

Neutral citation: [2024] KEELC 5339 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E035 OF 2023
LC KOMINGOI, J
JULY 11, 2024**

BETWEEN

MICHAEL NGANGA KIRURI PLAINTIFF

AND

THE LAND REGISTRAR, KAJIADO 1ST DEFENDANT

BENSON WACHIRA MUTHIGA 2ND DEFENDANT

JUDGMENT

1. By the Plaint dated 25th April 2023, the Plaintiff who is the Administrator of the Estate of the Late John Kiruri Ngugi seeks the following orders against the 1st Defendant:
 - a. The Hon. Court be and is hereby pleased to issue an Order compelling the 1st Defendant to rectify by cancelling all illegal and fraudulent entries (numbers 5-10) in the Green Card for Kajiado/Kisaju/517 and be registered in the name of John Kiruri Ngugi-deceased
 - b. Costs of this suit with interest from the date of judgment until payment in full; and
 - c. Any other or further relief that this Honourable Court may deem fit to grant to meet the ends of justice.
2. It is the Plaintiff's case that the 1st Defendant has refused to rectify the said records without a court order despite the fact that the 2nd Defendant was found guilty and charged of the following offences in relation to the suit property in Criminal case No. 2103 of 2015:
 - i. Obtaining registration of land by false pretence contrary to Section 320 of the Penal Code;
 - ii. Making a false document contrary to Section 347 (a) of the Penal Code;
 - iii. Fraudulently altering land document contrary to Section 103(1)(d) of the Lands Registration Act;



- iv. Making a document without authority contrary to Section 357 (a) of the Penal Code;
 - v. Forgery of title to land contrary to Section 350 of the Penal Code; and
 - vi. Altering a false document contrary to section 353 of the Penal Code.
3. The 1st Defendant in his statement of defence sought for dismissal of the suit on grounds that there was no cause of action against him.
 4. The 2nd Defendant neither entered appearance nor filed a defence.

Evidence of the Plaintiff.

5. PW1, Michael Ng'ang'a Kiruri adopted his witness statement as part of his evidence in chief and produced his bundle of documents as exhibits which were marked as P. Exhibits 1-84. He confirmed that he was the administrator of the Estate of his late father's (John Kiruri Ngugi) estate. He stated that after his father passed on, the 2nd Defendant trespassed on the suit property and falsified the records and cause it to be registered in his name. A criminal case regarding this was instituted and on 18th February 2021, the 2nd Defendant was found guilty of the offences. The records in favour of the 2nd Defendant should thus be cancelled and rectified and be registered in his father's name. He urged the court to allow the prayers in the Plaintiff.
6. The 1st Defendant did not tender any evidence.
7. At the close of the oral testimony, the Plaintiff tendered final written submissions.

The Plaintiff's Submissions.

8. Counsel submitted that the Plaintiff had produced evidence showing how his late father, John Kiruri acquired the suit property as legally required and as was held in *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR. It was on record that the 2nd Defendant had been found guilty of falsifying documents at the land registry. Therefore, the 1st defendant should be compelled to cancel and rectify the forged entries to reflect the proper owners as stipulated in Section 80 of the *Land Registration Act*. He put forward the case of *Margaret Wambui Mwangi v Chief Land Registrar, Kajiado* [2019] eKLR.

Analysis and Determination

9. I have considered the pleadings, the evidence of record, the written submissions, and the authorities cited. The issues for determination are:
 - i. Whether the 1st Defendant should be compelled to rectify entries 5 to 10 in the Green Card for Kajiado/Kisaji/517;
 - ii. Who should bear costs of the suit?
10. The Plaintiff's case is that his late father, John Kiruri was the lawful owner of property Kajiado/Kisaju/517 from the year 1987 but the 2nd Defendant fraudulently caused it to be registered in his name and consequently other names as shown in entries 5 to 10 of the Green card produced as exhibits. On 18th February 2021, the 2nd Defendant was found guilty and convicted of the offences already outlined above in relation to property Kajiado/Kisaju/517. I have had an opportunity of reading the judgement, which was also produced as evidence.
11. The 2nd Defendant having been found guilty of fraud, forgery and falsifying/altering land documents, it is without doubt that the title acquired thereon is founded on an illegality and stands vitiated. This



Court wields power and authority to order rectification of such registration as articulated by Section 80 of the [Land Registration Act](#) which provides that;

- (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...

12. The Plaintiff's evidence is uncontroverted.

However I find that the Plaintiff is still required to prove his case to the required standard of balance of probability. In the case of Kenya Power & Lighting Co. Ltd v Nathan Karanja Gachoka & Another [2016] eKLR where the court stated;

“I am of the opinion that uncontroverted evidence must bring out the fault and negligence of a defendant and that a court should not take it truthful without interrogation for the reason only that it was uncontroverted. A plaintiff must prove its case too upon a balance of probability whether the evidence was unchallenged or not.”

13. Accordingly, Judgement is entered for the Plaintiff as against the Defendant as follows;

- i. That the Land Registrar Kajiado is hereby ordered to cancel entries 5 to 10 in relation to Kajiado/Kisaju/517 and rectify the register to reflect the name of the late John Kiruri Ngugi as the rightful owner.
- ii. That costs of the suit shall be borne by the 2nd Defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 11TH DAY OF JULY 2024.

L. KOMINGOI

JUDGE.

In The Presence Of:

N/A for the Plaintiff.

N/A for the 1st Defendant.

N/A for the 2nd Defendant.

Court Assistant – Mutisya.

