



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ELC CASE NO. 274 OF 2016

- 1. FATMA ESSACK ABOO**
- 2. SHAMIM ESSACK ABOO**
- 3. NASEEM ESSACK ABOO**
- 4. ABDULHAMID ESSACK ABOO.....PLAINTIFFS**

VERSUS

- 1. RAJU RAMESH**
- 2. PWANI OIL PRODUCTS LTD.....DEFENDANTS**

JUDGEMENT

The plaintiffs' aver that at all material times herein the Plaintiffs are the children and beneficiaries of the estate of the late Essack Aboo who owned a House without land on Plot NO. 678/VI/M.N Jomvu. The 2nd Defendant is the registered proprietor of the property known as Plot NO. 678/VI/M.N. The late Essack Aboo was an employee of the 2nd Defendant was an employee of the 2nd Defendant. Sometimes in late July 2016, the 1st Defendant summoned the 1st Plaintiff to his office at Jomvu and informed her to vacate the House as they wanted to demolish the House to provide for more parking space. The Defendant have refused to offer the Plaintiffs alternative accommodation., The Plaintiffs are apprehensive that the Defendants would move in and evict the Plaintiffs from the House on Plot No. 678/VI/M.N. The Plaintiffs' claim against the Defendants is for a Declaration that the House on Plot NO. 678/VI/M.N belongs to the Plaintiff. The Plaintiffs prays for an order of Injunction to restraint the Defendants, their employees, servants and or agents form evicting, demolishing and or in any other way interfering with the Plaintiffs' possession of the House on Plot NO. 678/VI/M. the plaintiffs pray for;

1. A Declaration that the Plaintiff are the owners of the House on Plot No. 678/VI/M. N
2. An Injunction to restrain the Defendants, their employees, servants and or agents from evicting, demolishing and or in any other way interfering with the Plaintiffs' possession of the House on Plot NO. 678/VI/M.N
3. Costs
4. Any other and further relief this Honourable Court deems fit to grant.

The 1st Defendant admits that the 2nd Defendant is the registered Proprietor of the property known as Plot No. 678. VI/M.N. The Defendants however deny that the late Essack Aboo owned a house on the said parcel of land. The said Essack Aboo was an employee of the 2nd Defendant. The Defendants however deny that the late Essack Aboo constructed a house on the property known as Plot No. 678. VI/M.N. The Defendants state that the 2nd Defendant provided a dwelling house to the late Essack Aboo, father to the Plaintiffs, which it had constructed on the suit property. The Defendants further state that the late Essack Aboo was allowed to dwell on the suit property as an employee of the 2nd Defendant and for no other reason. That the 2nd Defendant, on humanitarian grounds, offered the Plaintiffs alternative accommodation for 6 months for the Plaintiffs to make arrangements for alternative accommodation but this offer was declined by the Plaintiffs.

PW1, the 1st plaintiff testified that the house belongs to their father who left it to them. She produced the building plans. That he was given the house by the defendants because he worked for them. DW1, the Director of the 2nd defendant stated that the 2nd Defendant is the registered Proprietor of the property known as Plot No. 678. VI/M.N. The Defendants however deny that the late Essack Aboo owned a house on the said parcel of land. The Essack Aboo was an employee of the 2nd Defendant. The Defendants however deny that the late Essack Aboo constructed a house on the property known as Plot No. 678. VI/M.N. The Defendants state that the 2nd Defendant provided a dwelling

house to the late Essack Aboo, father to the Plaintiffs, which it had constructed on the suit property.

This court has carefully considered the evidence and submissions therein. The Land Registration Act is very clear on issues of ownership of land/property and Section 24(a) of the Land Registration Act provides as follows:

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

Section 26 (1) of the Land Registration Act states as follows:

“The Certificate of Title issued by the Registrar upon registration ... 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... 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.”*

The law is clear that, the Certificate of Title issued by the Registrar upon registration 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 and the title of that proprietor shall not be subject to challenge except – On the ground of fraud or misrepresentation to which the person is proved to be a party; or Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

This court in considering this matter referred to the case of Elijah Makeri Nyangw’ra –vs- Stephen Mungai Njuguna & Another (2013) eKLR where the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. The court in the case while considering the application of section 26(1) (a) and (b) of the Land Registration Act rendered himself as follows:-

“-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.”

It is not in dispute that the 2nd defendants are the registered proprietor of Plot NO. 678/VI/M.N Jomvu. The defendants produced the certificate of title, rates payment and County Government Approvals. The plaintiffs maintain that the house on the suit land belongs to their father who left it to them. She produced the building plans. That he was given the house by the defendants because he worked for them. I find that the late Essack Aboo was an employee of the 2nd Defendant. That the 2nd Defendant provided a dwelling house to the late Essack Aboo, father to the Plaintiffs, which it had constructed on the suit property. I find that the plaintiffs cannot now have legal rights on the said house. I find that the plaintiffs have failed to prove their case on a balance of probabilities and I dismiss it with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 19TH DAY OF JANUARY 2022.

N.A. MATHEKA

JUDGE