



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KERUGOYA
ELC CASE NO. 293 OF 2014

**IBRAHIM MURIITHI MUTUGI (Suing as the administrator
and legal representative of the Estate of**

MUTUGI NGURI KIMBIRU (deceased).....PLAINTIFF

VERSUS

MARGARET WANGECHI KAROKI.....1ST DEFENDANT

JOHN MUNENE ANDEREA.....2ND DEFENDANT

JUDGMENT

The plaintiff suing as the administrator and legal representative of the Estate of MUTUGI NGURI KIMBIRU (deceased) filed this suit against the two defendants seeking the following reliefs:-

a. A declaration that MWERUA/KAGIO/522 belongs to the deceased and a registration of MWERUA/KAGIO/714 and 715 was fraudulent and the said titles so registered be revoked

b. Costs of this suit

The basis of this claim is that whereas at all material times the deceased was the registered proprietor of the parcel of land No. MWERUA/KAGIO/522, upon the demise of the deceased on 22nd May 2004, his beneficiaries discovered that in fact that parcel of land had been sub-divided and new titles issued being MWERUA/KAGIO/715 and 714 and registered in the names of the two defendants fraudulently.

The record herein shows that the two defendants were personally served with copy of plaint and summons on 13th November 2014 by a clerk known as COLLINS OMONDI from the firm of Mosi and Company Advocates but neither of them entered appearance nor filed any defence. Therefore on 4th February 2015, an interlocutory judgment was entered against them and this matter was listed for formal proof on 9th March 2015.

In his testimony, the plaintiff who is the son to the deceased told the Court that his father died on 22nd May 2004 (see Exhibit 4) and when the family was commencing the succession process, they found that the title deed in respect of MWERUA/KAGIO/522 was missing. He produced the Green Card and certificate of search (Exhibit 1 and 2) which showed that the title was closed upon the sub-division of that land into MWERUA/KAGIO/714 and 715 which parcels are now registered in the names of the two defendants – see Exhibits 3(a) and 3(b). He added that the defendants are not part of their family and their father did not sell the land to them and therefore that sub-division could only be fraudulent. He therefore obtained a limited grant (Exhibit 5) before filing this suit.

As indicated above, though served with the plaint and summons, the defendants who are stated to be man and wife did not enter any appearance nor file any defence and therefore the plaintiff's pleadings and his testimony are un-controverted.

According to the plaintiff, it was only upon the demise of his father that the family noticed that his land MWERUA/KAGIO/522 had been sub-divided into MWERUA/KAGIO/714 and 715 which were then registered in the names of the two defendants. When I asked him if perhaps his late father may have sold the land during his life-time, he said he would have known if that had happened. He added that the defendants are not part of their family.

I have considered the plaintiff's evidence which as I have said, was not controverted. Prior to filing this suit, he obtained a limited grant for purposes of instituting this suit and he says that the sub-division of MWERUA/KAGIO/522 into MWERUA/KAGIO/714 and 715 and the registration of these two parcels in the defendants' names could only have been done fraudulently because his late father did not sell the land to the defendants and neither are they related to him. As the defendants did not appear and defend this suit, the plaintiff's averments and testimony remain un-controverted. Although the drafting of the plaint left a lot to be desired in that the particulars of fraud were not clearly stated out as is required, it is clear from the plaint particularly paragraphs 10, 11 and 12 that fraud is alleged on the basis that the deceased never transferred his land to any person during his life time. I notice from the Green Card that this sub-division was done way back in 1972 when the deceased was still alive. However, when cross-examined by the Court, the plaintiff was emphatic that he would have known if there was any transfer relating to his father's land. He added that infact this transfer was only discovered upon his father's death. In the absence of evidence to the contrary, this Court can only go by the un-controverted testimony of the plaintiff.

Considering all the above and believing the plaintiff's un-controverted evidence as I do, I find that the plaintiff has established his case as required in law. I accordingly enter judgment for the plaintiff as per his plaint.

B.N. OLAO

JUDGE

20TH MARCH, 2015

20/3/2015

Before

B.N. Olao – Judge

CC – Gichia

Mr. Omenya for Mosi for Plaintiff – present

No appearance for Defendant

COURT: Judgment delivered this 20th day of March 2015 in open Court

Mr. Omenya for Mosi for Plaintiff present

No appearance for Defendant.

B.N. OLAO

JUDGE

20TH MARCH, 2015