



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
ELC CASE NO. 654 OF 2013

VINCENT NGARI NJOKA1ST PLAINTIFF
PATRICK NYAGA 2ND PLAINTIFF
JOSHUA NDWIGA3RD PLAINTIFF
CHARLES NJIRU 4TH PLAINTIFF
JACKSON NYAGA 5TH PLAINTIFF
PETER IRERI 6TH PLAINTIFF
DANSON KIURA 7TH PLAINTIFF

VERSUS

NYAGA MACUKIA 1ST DEFENDANT
CYRUS KITHUA NYAGA2ND DEFENDANT

JUDGMENT

By their plaint filed herein on 15th August 2013, the plaintiffs sought the following remedy against the defendants:-

1. ***A declaration that sub-division of land parcel number 135 Kasavari Adjudication section of Mbeere South District was illegal and fraudulent and any subsequent sub-divisions into parcel No. 284, 640, 648, 645, 646, 642, 647, 283, 641 and 644 in Kasavari Adjudication section of Mbeere South District and registration of land parcel No. 135 in the name of Nyaga Macukia are null and void***
2. ***Costs of the suit***
3. ***Any other relief this Honourable Court may deem fit to grant***

It is the plaintiff's case that all material times they were the ancestral owners of the said parcels of land (hereinafter the suit land) but the 2nd defendant, by virtue of his position as an employee of the Survey Department fraudulently caused the said suit land to be registered in the names of the 1st defendant.

The 2nd defendant who is son of the 1st defendant (now deceased) filed a defence in which he denied the

plaintiffs claims that they own the suit land adding that the said land is infact the property of his KAMUTURI clan of which the 1st defendant was among the elders. He added that this case was subject of objection proceedings in case No. 9 of 1975 in which the plaintiffs lost and an appeal to the Minister in appeal case No. 289 of 1979 was also dismissed in 1986. He denied the allegation that he used his office to defraud the plaintiffs of their land.

The 1st plaintiff gave evidence on behalf of the plaintiffs while the 2nd defendant gave evidence for the defence.

In the course of their testimonies, it became apparent that the suit land is infact in an adjudication area. When I put this question to the 1st plaintiff, he responded as follows:-

“The area is still under adjudication and the 1st defendant is not known”

When I put the same question to the 2nd defendant, his response was as follows:-

“Yes but I don’t know”

From the pleadings herein and having heard the two witnesses for both parties, it is clear to me that the suit land is still under adjudication. The plaint itself talks of

“--- Kasavari adjudication section of Mbeere South District”

Section 30 (1) of the Land Adjudication Act provides as follows:-

“Except with the consent in writing of the adjudication officer, no person shall institute, and no Court shall entertain any civil proceedings concerning on interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under Section 29 (3) of this Act” emphasis added.

Section 29 (3) of the same Act provides that once an appeal to the Minister has been determined, the Director of land shall alter the duplicate adjudication register and certify that the same is final and send details thereof to the Chief Land Registrar. From the documents made available to me, there is nothing to show that the register for the adjudication section has become final in all respects as required under **Section 30 (1) of the Land Adjudication Act**. All I can see are the adjudication proceedings and the order of the Special District Commissioner dated 25th February 1086 dismissing the appeal. In the circumstances, and bearing in mind the mandatory provisions of **Section 30 (1) of the Land Adjudication Act**, the plaintiff should not have instituted this suit and neither should the Court have entertained it. Unfortunately, this came to light in the course of the trial.

In the circumstances, the order that commences itself to make in this suit is to have it struck off with no order as to costs.

It is so ordered..//.+4+

B.N. OLAO

JUDGE

19TH DECEMBER, 2014

19/12/2014

Before

B.N. Olao – Judge

Mwangi – CC

1st, 2nd, 4th & 7th Plaintiffs – present

Defendants – absent

COURT: Judgment delivered this 19th day of December, 2014 in open Court

1st, 2nd, 4th & 7th Plaintiffs present

No appearance by the Defendants

B.N. OLAO

JUDGE

19TH DECEMBER, 2014