



REPUBLIC OF KENYA
INTHE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO. 329 OF 2010

OYVIND HOMRON1ST PLAINTIFF

STEPHEN KIOKO MAKAU 2ND PLAINTIFF

- VERSUS -

F. NUNDU 1ST DEFENDANT

THE DISTRICT LAND REGISTRAR KWALE 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

JUDGEMENT

[1] The Plaintiffs in this case pray for the following orders;

(a) *An injunction to restrain the first defendant either himself, his agents, employees and/or servants from transferring, charging, mortgaging and/or in any other manner dealing with title number **Kwale/Galu Kinondo/846** pending the hearing and determination of this suit.*

(b) *An order that all entries made in the register of title number **Kwale/Galu Kinondo/846** after the 11th June 1991 be nullified.*

(c) *An order that the name of the first defendant and the alleged new title issued on 30th October 2001 be cancelled from the register of title number **Kwale/Galu Kinondo/846** forthwith.*

(d) *A declaration that the first and second plaintiffs be reinstated as the lawful joint proprietors of title number **Kwale/Galu Kinondo/846** and a title deed be issued in their joint names forthwith.*

(c) *Costs of the suit.*

[2] The case for the plaintiffs is that they bought the suit land in 1988 jointly. That they were registered as joint owners on 5th July 1988 and were issued with a title deed. They subsequently applied for a change of user from Agricultural to Business cum Residential property. They subdivided the property into 19 individual plots. The witness one Stephen Kioko Makau who has letters of administration of the 2nd defendant (his deceased brother who had died on 9th June, 1991) and a Power of Attorney from the first plaintiff produced a copy of title parcel 842. The original having been

surrendered to the land office. The Plaintiffs were helped by one Philip Mwangi Warutere to do the subdivisions and obtain the titles because the first plaintiff was working in Bangladesh and the second plaintiff was working in Nairobi. The witness said that the said Warutere did not hand over the titles to the defendants. He instead sold plot No. 846 to one Helga Graser.

[3] The evidence is that the first plaintiff had built on the plot No. 846 and when he came for holiday in 1994 he found one Helga Graser on plot no. Kwale/Galu Kinondo/846 and in the house he had built. The said Helga Graser said that the property was sold to her by the said Warutere. This matter was reported to Diani Police Station and Warutere was arraigned in Court at Kwale. The police were able to recover from him the other 18 titles except for Kwale/Galu Kinondo/846. Mr. Warutere was bonded by the Court to appear but he jumped bail never to be seen again.

Helga Graser also left the scene and the witness does not know her whereabouts since 1996.

[4] The plaintiffs applied for a search on parcel 846 and the Green Card revealed a different story. The registered owner was shown as F. Nundu of P.O. Box 86903, Mombasa. The Certificate of Search and Green card were produced in Court as evidence. The Green Card shows that the plaintiffs were registered as co-owners on 11th June 1991. There are cancellations signed against by the Land Registrar the second defendant herein. The second entry is of Helga Graser whose passport is indicated thereon and who is shown as having purchased the same for Kshs. 350,000/- . Other entries show that title deed was issued, a general Power of Attorney which is cancelled and the name of F. Nundu as current registered owner. All these entries are countersigned against by the second defendant. The Plaintiff says that the entries from No. 2 to 6 were not made without his knowledge, permission and/or authority. the witness said that the Land Registrar is the custodian of all documents and is in charge of all entries and he holds him responsible for illegal entries no. 2 - 6. The plaintiff said that he had sent a demand notice to the said F. Nundu on the address given but there was no response. The said F. Nundu was served by way of substituted service copies of such service were filed in Court.

The witness prayed that the court do order Kwale Land Registrar to cancel the entries in regard to Kwale/Galu Kinondo/846 and register the plaintiffs as the real owners.

[4] Miss. Kiti Learned State Counsel for the second defendant said that they had asked the Land Registrar to come to Court and that he had completely refused to do so and by 3 p.m. when the defendants' time came to offer evidence, she said she had no evidence to offer.

[5] That being the case, the evidence of the plaintiff was uncontroverted. The Court takes the same as the truth. I have no doubt in my mind that the plaintiffs have proved their case on a balance of probabilities. I grant them their prayers as sought in their plaint.

Dated and delivered in open Court at Mombasa this 23rd day of August, 2013.

S.N. MUKUNYA

JUDGE

In the presence of:

Mr. Okanga Advocate for the plaintiff

No appearance for the respondent