



REPUBLIC OF KENYA.

IN THE ENVIRONMENT AND LAND COURT AT BUSIA.

CIVIL CASE NO. 10 OF 2013 (O.S)

IN THE MATTER OF THE REGISTERED LAND PARCEL NO. NORTH

TESO/KAMURIAI/762

AND

IN THE MATTER OF THE LAND REGISTRATION ACT 2012 LAWS OF KENYA.

BETWEEN

WILLIAM EMASAJAA ETYANG PLAINTIFF

AND

SIPHORA AMUSUGUT EBU DEFENDANT.

J U D G M E N T.

Plaintiff William Emasajaa Etyang, filed the originating summons dated 18th February, 2013, through M/S. A.G.A Etyang & company Advocate, against the defendant Siphora Amusugut Ebu seeking the following determinations;-

1. Whether Land parcel North Teso/Kamuriai/762 was registered in the names of Iropu Ichodo (deceased).
2. Whether or not upon the death of Iropu Ichodo, the plaintiff was appointed the administrator of his estate.
3. Whether the High court has issued a certificate of confirmation of grant vesting the suit property into the plaintiff's ownership.
4. Whether the plaintiff has applied to the Land Registrar for the registration of the suit property by transmission on the death of the proprietor.
5. Whether the registration of Siphora Amusugut Ebu as the proprietor of the suit property on 5th November, 2012 was lawful.
6. Whether the registration of Siphora Amusugut Ebu as proprietor of the suit property on 5th November, 2012 should be cancelled and the plaintiff declared and registered as the proprietor by transmission upon the death of Iropu Ichodo.
7. Whether the defendant should be condemned to pay costs of this suit.

The originating summons was filed together with the supporting affidavit of William Emasajaa Etyang sworn on 18th February, 2013 to which is annexed a copy of the green card for land parcel North Teso/Kamuriai/762 and certificate of official search for the same land, showing that Iropu Ichodo was

registered with the land on 16th June, 1975. Also annexed to the supporting affidavit is, among others, a copy of certificate of death, NO.013, showing Iropu Ichodo died on 16th June, 1975, forms P & A 41 and 54 and certificate of official search dated 15th January, 2013 showing that Siphora Amusugut Ebu was registered with the suit land on 5th November, 2012.

The Defendant was served but did not file any replying affidavit. She also did not attend to the court during the hearing. The Plaintiff gave his verbal testimony as PW 1, confirming the contents of his supporting affidavit. The court has carefully considered his testimony and the contents of the supporting affidavit which are not challenged and find as follows:-

1. That the copy of the green card, certified by the Land Registrar as a true copy, clearly shows that Iropu Ichodo was the first registered owner of land parcel North Teso/Kamuriai/762. He got registered on 16th June, 1975.
2. That the said Iropu Ichodo died on 16th June, 1975 as confirmed by the copy of the certificate of death issued on 8th March, 2011.
3. That the Plaintiff herein filed Busia Succession Cause No. 107 of 2011 in respect of the estate of Iropu Ichodo and was appointed the administrator of the said estate.
4. That on 1st November, 2012, the grant of representation in respect of the late Iropu Ichodo issued to the plaintiff herein, was confirmed by the High Court in terms of section 71 (1) and (3) of the Law of Succession Act. It indicated that the plaintiff William Emasajaa Etyang was to inherit the whole Land parcel North Teso/Kamurai/762.
5. That the Plaintiff prepared the necessary transmission documents dated 2nd November, 2012 and presented them to the Land Registrar after making a payment of Kshs.500/- on 29th November, 2012.
6. That the basis of the registration of the defendant, Siphora Amusugut Ebu, as the proprietor of the suit land on 5th November, 2012 has not been disclosed. The Plaintiff indicated in his testimony that the defendant was not an heir of the deceased, Iropu Ichodo and was not known to him.
7. That the registration of the defendant as the owner of the suit land was therefore unlawful and should be cancelled so as to enable the plaintiff register the transmission documents.

Having found as above, the court finds that the plaintiff has established his case against the defendant to the standard required and orders as follows:-

- a. That the registration of Siphora Amusugut Ebu on 5th November, 2012 as proprietor of North Teso/Kamuriai/762 be and is hereby revoked and the ownership of the land reverted to Iropu Ichodo.
- b. That the Plaintiff be at liberty to present his transmission documents to the Land Registrar for processing in the normal way.
- c. The defendant to pay costs of this suit.

S. M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 4TH DAY OF DECEMBER, 2013.

IN THE PRESENCE OF;

JUDGE.