

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT 422 OF 2010

ROBERT OWINO DUNDO.....PLAINTIFF

VERSUS

MOHAMED PANJU.....DEFENDANT

JUDGMENT

The plaintiff obtained interlocutory judgment against the defendant and the case proceeded before me by formal proof. The plaintiff in evidence stated that he was married to Pauline Lilian Madeline Jones (now deceased). During the subsistence of their marriage they purchased plots nos. 1690 and 1691 MN Mtwapa. She passed away but he has now obtained a confirm grant in respect of her estate. It was issued on 25th October 2010. The court in that succession matter when confirming the grant distributed those two parcels in his name. He however said that those parcels were transferred fraudulently to the defendant's name after the death of his wife. His wife died on 2nd August 2008 and both the plots were transferred to the defendant's name on 31st March 2009. That transfer into the defendant's name was done in the absence of a grant. The plaintiff sought that the court will order cancellation of the transfer of those plots into the defendant's name and the same be registered in his name. The plaintiff evidence was not controverted and I believe it. I believe it because it is supported by documentation that the plaintiff produced before court. The plaintiff produced the marriage certificate between him and his late wife which shows that they contracted their marriage on 25th January 2002. He also produced his late wife's death certificate. The confirmed grant issued in Mombasa High Court Succession Cause No. 189 of 2009 is before court. The searches of both plots and a copy of the title certificate are before court. The plaintiff finally said that he was in possession of both plots.

It is clear from those documents that the plots were indeed transferred to the defendant's name on 31st March 2009 a date after the death of his wife. The prayers of the plaintiff are merited. The plaintiff stated that the two plots according to the succession cause are to be inherited by him and he has prayed that the plots be transferred into his name. I am in agreement that those prayers should be granted. I grant the following orders:

- 1. That the entry in plots nos. 1690 and 1691 MN Mtwapa in the name of MOHAMED RAZA PANJU is hereby expunged and the court orders that both plots be registered in the name of ROBERT OWINO DUNDO.***
- 2. The plaintiff is awarded costs of the suit.***

DATED and DELIVERED at MOMBASA this 25th day of April, 2012.

Mary Kasango
JUDGE