



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CIVIL CASE NO. 168 OF 2010

BEATRICE KAGAI LOVONI..... PLAINTIFF

AND

PHOEBE KIVANDI LOVON INTERESTED PARTY

VERSUS

HILLARY KAMADI ALUGAYADEFENDANT

JUDGMENT

1. By a plaint dated 5.11.2010, Beatrice Kagai Lovoni pleaded that the Defendant was her nephew and son of the interested party. That she purchased land parcel No. North Maragoli/Mbale/1549 on behalf of the interested party and registered it in her own names.
2. That in 2007, she planned to migrate to the United States of America where the Interested Party resides and she decided to transfer the land to the Defendant to hold in trust for the interested Party, his mother. The plans to migrate did not materialize and she sought transfer of the land to the interested party but the Defendant refused to do so. That the Defendant has continued to act dishonestly and with malice with regard to the matter and the particulars thereof are as follows;
 - a) *Treating the suit property as his when he personally contributed nothing towards its acquisition.*
 - b) *Forcible detainer.*
 - c) *Offering the suit property for sale.*
 - d) *Purporting to have purchased the suit land for the sum of Kshs.60,000/= from the plaintiff when he paid nothing for the same*
 - e) *Failing to disclose to the land registrar and the tenants that he was only a trustee and or caretaker and not the absolute owner thereof.*
 - f) *Obtaining title to the suit land fraudulently.*
 - g) *Using abusive and unbecoming language to the plaintiff and the Interested Party.*
 - h) *Impersonating as the owner of the property to the tenants when he is not.*
 - i) *Collecting rent from the tenants and fraudulently failing to account to the plaintiff and the Interested Party.*
 - j) *Obstructing access to the property by the plaintiff and the Interested Party.*
 - k) *Failing to abide by the terms of the trust.*
3. The plaintiff then seeks the following orders;

a) The entries No. 6 and 7 at Vihiga District Land Registry on the title know as North Maragoli/Mbale.1549 be cancelled and the title reverts to the plaintiff or **ALTERNATIVELY** transfer of the title be effected by this Honourable Court directly in the name of the Interested Party.

b) Costs be awarded to the plaintiff against the defendant.

4. Although the Defendant was properly served with summons to enter appearance and file defence, he never did so and when she testified before me on 2.2.2011, the Defendant repeated the above matters and to my mind, there is little more to say. Her evidence is unchallenged and I also uphold it. She struck me as honest and believable and the Defendant was reaping where he never sowed.

5. In the end, the plaintiff has proved her case to the required standard and prayer (a) of the plaint is granted limited only to the order that the suit land be transferred directly to the names of the Interested Party, Phoebe Kivandi Lovon. As the Defendant chose not to respond to the suit, I shall make no order as to costs.

6. Orders accordingly.

Delivered, dated and signed at Kakamega this 14th day of April, 2011

**ISAAC LENAOLA
J U D G E**