



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CIVIL CASE NO. 125 OF 1996

ELI OMULO OLUOCH 1ST PLAINTIFF
MARGARET LUYA JUMA 2ND PLAINTIFF
IBRAHIM AMBANI 3RD PLAINTIFF
THOMAS OWUOR JUMA 4TH PLAINTIFF
PETER AGALU OBALA 5TH PLAINTIFF

V E R S U S

EMY SIGANGA DEFENDANT

R U L I N G

This is a long and protracted case. The 1st, 2nd, and 3rd plaintiffs filed suit against the daughter of the defendant, Christopher Nathaniel Siganga (deceased) in 1996 claiming ownership of a parcel of land known as South Kabras/Shamberere/526 (the suit property) by adverse possession. The suit was heard by Tanui J. In his considered judgment delivered on 9th March 2001, the learned judge dismissed the said plaintiffs' suit with costs. The court found that the plaintiffs had failed to establish their case to the required standard of proof on a balance of probabilities. At page 6 of the judgment, the learned judge had this to say:

“Lastly as the defendant is the registered proprietor of the suit land and the plaintiffs having failed to establish any rights to it I find that that they are trespassers. I therefore order the plaintiffs to give vacant possession of any of the parcel of land title No. South Kabras/Shamberere/526 which they occupy to the defendant within six months from todays date. In default the plaintiffs are to be evicted on expiry of that period. The plaintiffs will also be restrained as prayed. The defendant will have the costs of this consolidated suit.”

The said plaintiffs were aggrieved by the said decision of the court. They duly lodged an appeal to the Court of Appeal. The appeal was filed as Civil Appeal No. 366 of 2001 at the Court of Appeal sitting at Kisumu. Their appeal was however unsuccessful. It was dismissed with costs to the defendant. The plaintiffs were not daunted. After the dismissal of the appeal by the Court of Appeal, the plaintiffs lodged a claim before the Kabras Land Dispute Tribunal claiming the same parcel of land. In utter contempt of the decision of this court and that of the Court of Appeal, the said Land Disputes Tribunal made the following ruling:

“The panel of elders decided and ruled that everyone who was evicted to go back and stay as usual and the title deed obtained by the defendant should be cancelled for the District Surveyor to give each one his number including the defendant who should occupy his plot (Peter’s plot) which he bought. Note that the

defendant did not buy the whole parcel of land”.

The defendant did appeal against the said decision to the Western Provincial Appeals Tribunal. The appeal was however dismissed. The plaintiffs moved to the Chief Magistrate’s Court and had the said decision of the South Kabras Land Disputes Tribunal adopted as a judgment of the court. The plaintiffs proceeded to have the suit property subdivided. New titles have been issued in respect of the suit property. The new titles are respectively registered as L. R. Nos. South Kabras/Shamberere/2834 – 2838.

Upon the death of Christopher Siganga, this court substituted his daughter, Emy Siganga as the defendant in this suit. On 5th July 2011, the defendant moved this court by chamber summons pursuant to the provisions of **Section 3** and **3A** of the **Civil Procedure Act** and **Section 154** of the **Registered Land Act** seeking orders of this court to nullify or cancel the subdivision and subsequent transfer of the suit property to the following five numbers i.e. South Kabras/Shamberere/2834, 2835, 2836, 2837 and 2838. The defendant further prayed that upon the cancellation of the above titles, the land reverts to the original title number i.e. South Kabras/Shamberere/526 in the name of the original owner Christopher Nathaniel Waudu Siganga. The application was supported by the grounds stated on the face of the application. The application is supported by the annexed affidavit of the defendant. The application is opposed. The plaintiffs filed grounds in opposition to the application. The plaintiffs essentially state that the defendant’s application was not maintainable in law and should be dismissed with costs.

At the hearing of this application, this court heard rival submissions made by Mr. Elungata for the defendant and by Miss Andia for the 2nd to 5th plaintiffs. The court was informed that the 1st defendant was deceased. This court has carefully considered the said submissions. It has also read the pleadings filed by the parties herein in support of their respective opposition positions. **Section 3A** of the **Civil Procedure Act** provides that:

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the due process of the court.”

From the facts of this case, it was clear beyond any shadow of doubt that the plaintiffs abused the due process of this court. A court of competent jurisdiction heard the plaintiffs’ case and proceeded to dismiss it with costs to the defendant. The court ordered the plaintiffs to be evicted from the suit property. From the evidence placed before the Kabras Land Disputes Tribunal, it was apparent that the plaintiffs were indeed evicted from the suit property. Their appeal to the Court of Appeal was unsuccessful. Since the Court of Appeal was at the time the highest court of Kenya, common sense dictated that the matter would come to an end. It was not to be. Instead the plaintiffs went before a tribunal in a bid to overturn a decision of the High Court. In an unprecedented decision, the said land disputes tribunal overturned the decision of the High Court and the Court of Appeal and ordered the plaintiffs to be restored to the suit property. In fact, the said tribunal went ahead and cancelled the title that was registered in the names of the deceased. In a strange twist, the said decision by the Land Disputes Tribunal was affirmed by the Western Provincial Land Disputes Committee. The plaintiffs moved to the Chief Magistrate’s Court and had the decision surreptitiously adopted as a judgment of this court. They then proceeded to the Lands registry and had the decision given effect to by having the title issued to the defendant cancelled.

Can this court allow the plaintiffs to get away with this blatant abuse of the due process of the court? I do not think so. The South Kabras Land Disputes Tribunal and the Western Provincial Land Disputes Appeals Committee are inferior bodies to this court. The decision of this court overrides and supersedes any decision issued by the said tribunals. It was clear to the court that the plaintiffs appeared before the said tribunal knowing very well that this court and the Court of Appeal had rendered a final decision on the matter. The plaintiffs moved the said tribunal in abuse of the due process of the court. That decision cannot stand. This court will invoke its inherent jurisdiction as provided under **Section 3A** of the **Civil Procedure Act** to do justice to the parties in this case.

The justice of this case demands that this court does the following:

- i) This court hereby nullifies and cancels the illegal subdivision and the subsequent transfers

made in respect of the suit property i.e. L. R. No. South Kabras/Shamberere/526. The following titles issued subsequent to the said illegal subdivision and transfer are hereby ordered cancelled forthwith i.e. L.R. No. South Kabras/Shamberere/2834, 2835, 2836, 2837 and 2838. The title of the suit property shall revert to Christopher Nathaniel Waudu Siganga (deceased).

ii) The plaintiffs and any one claiming under them are hereby ordered evicted forthwith from the suit property. The plaintiffs shall be evicted with the assistance of the Provincial Administration and the Police so that the status quo ante before the unlawful proceeding commenced before the Kabras Land Disputes Tribunal is restored.

iii) The defendant shall have the costs of this application.

DATED AT KAKAMEGA THIS 25TH DAY OF JULY 2011

L. KIMARU

J U D G E