



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 186 OF 2008

RIZIKI AHMED KIBWANA

**(SUING AS AN ADMINISTRATRIX OF THE ESTATE OF AHMED KIBWANA JUMA
(DECEASED).....PLAINTIFF**

**VERSUS
PATRICK WANYAGI**

MURIUKI.....DEFENDANT

JUDGMENT

The plaintiff, **Riziki Ahmed Kibwana**, (hereinafter “*the plaintiff*”) has instituted this suit as the administratrix of the estate of Ahmed Kibwana Juma (deceased). The suit was instituted by way of a plaint filed on 23rd July, 2008, against **Patrick Wanyagi Muriuki** (hereinafter “*the defendant*”). It is pleaded in paragraph 4 of the plaint that prior to April 1991, or thereabouts, the deceased was the registered proprietor of Title No. Kilifi/Mtwapa/50 (hereinafter “*the suit land*”). It is further pleaded, in paragraph 5 and 7, that the said Ahmed Kibwana Juma died on or about 21st May, 1991 and was survived by the plaintiff who on 23rd June, 2008 obtained a Limited Grant of Representation to the estate of the deceased. It is also pleaded, in paragraph 8, that a search made of the suit land revealed that the same was registered in the name of the defendant and a title deed issued to him on 19th April, 1991.

It is then pleaded, in paragraph 9 and 10, that the transfer of the suit land to the defendant was null and void on the grounds that the deceased had never executed any sale agreement, application for consent and/or transfer in favour of the defendant and that the said registration in favour of the defendant was obtained by means of fraud, forgery and impersonation.

The plaintiff therefore prayed for a declaration that the suit land belongs to the estate of the deceased and for an order canceling the defendant as the registered proprietor thereof.

The defendant neither entered appearance nor filed a defence to the plaintiff’s claim. The suit therefore proceeded before me by way of formal proof on 23rd June, 2010. Counsel subsequently filed written submissions on 13th July, 2010. In her oral testimony before me the plaintiff stated that she had sued the defendant as the administratrix of the estate of the deceased. She produced the Limited Grant of Representation as PEX 2 and a copy of the death certificate as PEX 3 which showed that the deceased

died on 21st May, 1991. The plaintiff further testified that her late father did not sell the suit land to anyone during his life time but when she visited Lands office, she found copies of transfer documents in favour of the defendant which documents were not executed by the deceased. She produced copies of the sale agreement (PEX 4), transfer (PEX 5) and letter of consent (PEX 9). She also produced Exhibit 6 which was a document showing that the deceased's identity card number was MSA 941633 and had been issued in the names of Ahamed Kibwana Juma. She pointed out that the purported sale agreement was dated 22nd July, 1987 yet the letter of consent was issued on 5th May, 1986. She further pointed out that the Identity Card number quoted in the transfer was not that of the deceased. The documents, according to the plaintiff, clearly disclosed fraud and forgery. In the premises the plaintiff contended that she was entitled to the reliefs claimed in her plaint.

The plaintiff called **Ziro Tsuma**, (PW 2), who testified that the plaintiff was indeed the surviving daughter of the deceased who was the owner of the suit land. He agreed with the plaintiff that the deceased had not sold the suit land to the defendant or anyone else.

At the conclusion of the oral testimony, counsel for the plaintiff filed written submissions in which he contended that the plaintiff had proved her case on a balance of probabilities.

Having carefully considered this matter, I am satisfied that the uncotroverted evidence tendered by the plaintiff and particularly the documentary evidence comprised in the various exhibits tendered herein by the plaintiff conclusively establish that the suit land was transferred to the defendant by forgery and impersonation. The particulars given in the transfer documents were not those of the deceased. The dates indicated in the same documents conflicted with each other. Of particular significance is the purported consent to the purported transfer which consent was given before the agreement of sale was even executed. I am satisfied that the suit land belongs to the deceased and the plaintiff is entitled to the reliefs she seeks in her plaint. Judgment is therefore hereby entered in favour of the plaintiff against the defendant as prayed with costs

Orders accordingly.

DATED AND DELIVERED AT MOMBASA THIS 8TH DAY OF SEPTEMBER 2010.

F. AZANGALALA

JUDGE

Read in the presence of:-

Mr. Mutugi for the Plaintiff.

F. AZANGALALA

JUDGE

8TH SEPTEMBER 2010