



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MALINDI

ELC CASE NO. 36 OF 2014

GIDEON RUMBA.....PLAINTIFF

VERSUS

MARGARET KAHINDI.....DEFENDANT

JUDGMENT

BACKGROUND

1. By a Plaint dated 3rd March 2014, Gedion Rumba (the Plaintiff) prays for Judgment against Margaret Kahindi (the Defendant) for: -

a) A permanent injunction (restraining) the Defendant, her servants, employees, agents and or any other person acting through her from encroaching, trespassing, or in any other manner interfering (with) the one -acre parcel of land on Plot No. Majaoni/Block 5A/133 with a house thereof;

b) An order to issue to the Land Registrar Kilifi to cancel the Title Deed issued to the Defendant's deceased husband and the transfer of one acre be issued to the Plaintiff;

c) Costs and interest at Court rates;

d) Any other relief that (the) Court deems fit to grant.

2. The prayers arise from the Plaintiff's contention that at all times material, he was the bona fide owner of the said parcel of land having acquired it in 1971. The Plaintiff avers that he has developed the land and put up a semi-permanent house thereon. Recently however the Defendant has unlawfully labelled herself the owner of the suit property and has on several occasions trespassed thereon.

3. The Plaintiff asserts that the Defendant's claim arises from a fraudulent acquisition of the same by her deceased husband one Nehemiah Kahindi Stephen.

4. But in her Statement of Defence dated 26th March 2014 and filed herein on 16th April 2014, the Defendant denies the Plaintiff's allegations in total and invites the Plaintiff to strict proof thereof.

The Plaintiff's Case

5. The Plaintiff(PW1) testified as the sole witness in his case at the trial. He told the Court that he is the owner of the one-acre parcel of land on Plot No. Majaoni/Block 5A/133 Kilifi and that he has lived thereon for 42 years.

6. PW1 testified that when he acquired the land, it was bushy and he cleared it as the Defendant's husband Nehemiah Kahindi Stephen who is now deceased cleared an adjacent parcel and settled therein. At the time, PW1's land was then designated as a trading centre by the Kilifi County Council, and it was therefore meant to be adjudicated and demarcated.

7. PW1 told the Court that accordingly they petitioned the Kilifi Land Registrar to go and register the people on the ground. On the material day, the Officer did not turn up and when PW1 went to their office to inquire, he was turned away for not having the money required for him to be served.

8. PW1 further testified that a month later when he went back to the offices, he discovered that his portion of land and that of Nehemiah had

both been registered in Nehemiah's name. He was told the anomaly would be corrected but that was not done to-date. After Nehemiah's death, the Defendant started encroaching on the Plaintiff's portion and cultivating the same.

9. On cross-examination, PW1 testified that he entered the land in 1971 and that there was no dispute over the land until the year 2007 when the Defendant's husband died. The dispute later started in 2013, when there was a case of forcible detainer in regard to the land. PW1 testified that Land Adjudication was done in the area in 1987 but they did not apply for allocation as the area was a trading centre.

The Defence Case

10. The Defendant (DW1) equally testified as the sole witness in her case at the trial. She told the Court that the parcel of land in dispute belonged to her late husband Nehemiah Kahindi Stephen. It was previously occupied by her husband's father Stephen Ziro Tuyu in 1946 at a time when it was still Government land.

11. DW1 testified that the land was demarcated from around 1987 and her late husband was thereafter issued with a title deed in 1990 after following the due process. She further told the Court they have always occupied the land without any problem with the Plaintiff when her husband was alive.

12. On cross-examination, DW1 told the Court she resides in Stephen Ziro's home. She conceded that the Plaintiff was their neighbor when she was married at the said home in 1978. DW1 testified that the home belonged to her husband's father and that he had told them the Plaintiff asked for a place to do business and had been allowed.

13. While conceding that there were some shops near the road when she was married and that the Plaintiff ran a tailoring shop thereat, DW1 told the Court the disputed portion of the land was not part of the shopping area. At the time, her father-in-law was yet to acquire title for the land as survey had not been done until around 1989.

14. DW1 conceded that in 2010, the Plaintiff buried his child on the land. DW1 had given birth at the time and she told the Court she only learnt later that the Plaintiff's daughter had been buried on their land. By then there was nothing she could do. DW1 told the Court that she however later on protested when the Plaintiff buried his donkey on the land. She told the Court they did not take any steps against the Plaintiff as they knew how he is but were now fed up with him.

15. DW1 further conceded that they went to the Chief where she produced her ownership documents. She told the Court that when it was realized that the Plaintiff had no documents to support his claim, he was told to go home and negotiate with DW1. Instead of going home, the Plaintiff went to make another complaint at the Kilifi DO's Office.

16. DW1 conceded again that she filed a criminal complaint against the Plaintiff. She told the Court she did so because the Plaintiff was threatening her after they came from the Chief's Office. The Plaintiff was later acquitted.

Analysis and Determination

17. I have perused and considered the pleadings filed herein, the oral testimonies of the witnesses and the evidence adduced at the trial. I have similarly considered the rival submissions placed before me by the parties.

18. The Plaintiff prays for injunctive orders restraining the Defendant from trespassing upon or in any manner whatsoever interfering with one-acre parcel of land said to be on Plot No. Majaoni/Block 5A/133. He further craves an order directed to the Land Registrar Kilifi requiring the Registrar to cancel the title deed issued to the Defendant's husband in regard to one-acre portion of the land and to have the same transferred to his name.

19. In support of his case, the Plaintiff testified that he has lived on that portion of land for 42 years and that he acquired the same when it was just full of bush which he proceeded to clear. The Plaintiff told the Court that as he cleared the disputed portion of land, the Defendant's husband, the late Nehemiah Kahindi Stephen was equally busy clearing an adjacent parcel of land which the deceased then settled on with his family.

20. The Plaintiff further told the Court that at the time, the disputed portion of land was designated by the defunct Kilifi County Council as a trading centre and that it was then meant to be adjudicated and demarcated to those in occupation. It was his case that the occupants accordingly petitioned the Council to go register those on the ground but no one went to the ground.

21. The Plaintiff further testified that some time later when he went to check on the status of the land he discovered that his portion had been amalgamated with that of the Defendant's late husband and registered in the name of the Defendant's husband. He told the Court the officials kept on promising that they would rectify the anomaly but that did not happen. He further told the Court that when the Defendant's husband died, the Defendant started encroaching on his portion of land and cultivating the same.

22. As it were, it was not very clear how the Plaintiff acquired the disputed portion of land. Other than his claim that he had cleared the land of bush, there was no evidence that he was allocated the land which he calls a trading centre by the then County Council or any other Government agency charged with authority to allocate land.

23. From the material placed before me, it was evident that the allocation of the disputed property arose from a land adjudication exercise conducted in the Majaoni area where the property is located. Under cross-examination, the Plaintiff conceded that land adjudication was done in the area in 1987 and that he was there when it was done. He however told the Court that people did not apply for the disputed portion of the land as it was a trading centre.

24. The Plaintiff did not however provide any evidence either from the County Council or any other authority that the area he claims was a designated trading centre. While he says the residents did not apply, it was clear that the Defendant's husband applied and was allocated 2.0 Ha of land designated as Majaoni/Block 5A/133. The Plaintiff conceded at the trial herein that he did not file any appeal following the land adjudication exercise.

25. While he wants this Court to cancel the Title Deed issued to the Defendant's husband, it was evident that the late Nehemiah Kanindi Stephen was issued with a Title Deed for his parcel of land on 4th July 1990. Thereafter, the late Nehemiah was around the face of this earth for another 17 years before death would take him at the prime age of 58 years on 22nd November 2007. All this time the Plaintiff neither disputed his title nor sought its cancellation.

26. As it were the entire 2.0 Ha parcel of land exclusively belonged to the late Nehemiah. No action was brought by the Plaintiff to recover the one-acre portion of land from Nehemiah within 12 years as required under Section 7 of the Limitation of Actions Act. Indeed, this suit was filed some 24 years after the land had been registered in the late Nehemiah's name.

27. On his death, Nehemiah's property passed to his estate. While the Defendant is legally entitled as a beneficiary to the estate, nothing was placed before me to demonstrate that she is the Administrator of the Estate of Nehemiah Kahindi Stephen and that this suit was brought against her in such capacity.

28. In any event, the title issued to the late Nehemiah can only be challenged if the Plaintiff can establish that the same was obtained by fraud, misrepresentation or some other impropriety. The Plaintiff neither alleged fraud nor proved any.

29. In the premises, the Plaintiff's suit against the Defendant is clearly misconceived and incompetent. It is dismissed with costs to the Defendant.

Dated, signed and delivered at Malindi this 29th day of January, 2021.

J.O. OLOLA

JUDGE