



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI(NAIROBI LAW COURTS)

CIVIL CASE NO. 312 OF 1992

GRACE WARINU NGIGI & ANOR.....PLAINTIFF

VERSUS

NGUGI NGURI & 4 OTHERS.....DEFENDANT

JUDGMENT

The two plaintiffs pray for an order that the registration of the defendants as owners of L.R Githunguri/Kiathangari/1081 be cancelled and the land reverts to the deceased's name as it was prior to 1.2.91 and a succession suit be commenced under the Law of succession Act to determine the heirs of the land.

In paragraph 5 of the plaint, the plaintiffs aver that on about 1991 after the death of Nguri Ndikarumwo the proprietor of Land title No. githunguri/Gathangari/1081, the defendants wrongfully transferred the land to themselves without filing succession to determine the heirs of the deceased's estate and thus deprived plaintiff of the share of the land. Plaintiffs alternatively aver in paragraph 6 of the plaintiff that the defendats forged the deceased's thumb print or signature on the transfer form and on the application for consent of the Land control Board form to have the suit land transferred to them thus depriving plaintiffs of their entitlement.

Defendants filed a Defence on 20.4.95 In para 4 of the Defence defendants aver that ther3e was no need to file a succession case as deceased did not die interstate. They deny forgery They do not explain the circumstances of the registration but the affidavit of 3rd defendant sworn on 18.2.92 does so.

However defendants and their counsel did not attend the hearing. The first plaintiff gave evidence as PW! Her mother Njoki was the wife of Nguri Ndikarumwo and Ngugi Nguri (1st defendant); Reuben Mwangi Nguri (2nd defendant) and Davis Njuguna Nguri (4th defendant) are her brother Nguri Ndikarumwo had two other wives – Wacera Nguri (deceased) who is the mother of Ndungu Nguri Ndikarumwo (3rd defendant) and Macharia Nguri (5th defendants) so the 3rd and 5th defendants are first plaintiffs step brothers.

The other wife of deceased is one Nduta who is the mother of the 2nd plaintiff. All the three wives of Nfuri Ndikarumwo died on 13.1.91 aged 101 years.

The Abstract of title (ex 2) shows that deceased was registered as proprietor of land title no. Githunguri/Gathangari/1081 measuring 12.97 hectares on 21.9.66.

The abstract of tile further shows that on 1.1.91, the five defendants were registered as proprietor of the land and Title Deed Issued on the same day. That registration was as a result of a Transfer dated 7.1.91 (Ex 4) The copy of the said Transfer shows that Nguri Ndikarumwo appeared before Mr. Wariuki

Advocate on 7.1.91 and executed the transfer being identified by his I/S Card It further shows that defendants appeared before the same advocate on the same day and executed the transfer being identified by their respective I.D Cards. Ndungu Nguri Naikarumwo (3rd defendant) sworn an affidavit on 18.2.92 which was filed in court on 26.2.92 That affidavit was sworn with the authority of the other defendants. He deposes in paragraph 5 of the affidavit that deceased executed the transfer on 7.1.91 after the Land Control Board had given its consent on 19.12.90 but that the registration of the Transfer was completed on 1.2.91.

He annexed the copy of the Transfer the application for consent of the Land Control board and the consent of the Land Control Board. It is clear in this case that Nguri Naikarumwo the proprietor of Land title No. Githunguri/Gathangari/1081 died on 13.1.91 It is also clear that Transfer dated 7.11.91 was presented to the Land Registrar for registration on 1.2.91 and that the transfer was registered on 1.2.91 that was about 24 days after the death of the registered proprietor. Upon the death of the deceased proprietor on 13.1.91 his estate vested on his personal representatives and nobody would deal with the estate unless he had obtained a Grant of letters of administration. All the rights of the deceased in the suit land ceased at the time of his death. The transfer dated 7.1.91 would not have legally been registered after the death of the deceased. Any transfer of land after the death of the registered proprietor would only have been done legally after the death of the deceased. Any transfer of land after the death of the registered proprietor would only have been done legally by the deceased personal representatives upon appointment. The Transfers became creditors to the estate after the death of the registered proprietor and it is only the personal representatives of the deceased who would vest title on them

It is overwhelmingly clear that the presentations and registration of the transfer on 1.2.91 24 days after death of the deceased was fraudulent and a nullity. The estate of the deceased would only have dealt with under the law of succession Act after his death and not otherwise.

The order sought cannot be resisted in view of the law. Secondly, PW1 states in her evidence that she was living with the deceased; that deceased had been almost blind for the past 5 years prior to his death and that deceased did not leave home at any time to go before an advocate to execute the transfer or to attend to Land Control Board meeting. Indeed the plaintiffs had reported the case to the police for investigations of possible forgery. Police decline to investigate the case because this suit had already been filed. Plaintiffs then made an application asking the court to order police to investigate the alleged forgery First plaintiff swore an affidavit on 22.1.92 in support of the application for an order of prohibition to prohibit defendants from dealing with the land until the final determination of the suit.

What she has told the court agrees with the contents of paragraph 6 of the said affidavit sworn on 22.11.92.

His evidence has not been refuted. Her evidence is given weight by the fact that the deceased was an advanced age of 70 years and by the fact that the alleged transfer was executed six days before his death. I am satisfied on the balance of probabilities that the thumb print of the deceased on the Transfer dated 7.1.91 is a forgery.

For the above reasons, I allow the plaintiffs' suit with costs and enter judgment for plaintiffs in terms of prayer 1 of the plaint.

E. M. Githinji Judge

22.5.2002

Mr. Mwicigi Kinuthia for plaintiffs present