



**Pkemoi (Suing on behalf of the Estate of Yano Chelanga William
- Deceased) v Samal (Environment & Land Case 35 of 2021)
[2022] KEELC 14688 (KLR) (8 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14688 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 35 OF 2021
FO NYAGAKA, J
NOVEMBER 8, 2022**

BETWEEN

**DANIEL PKEMOI (SUING ON BEHALF OF THE ESTATE OF YANO
CHELANGA WILLIAM - DECEASED) PLAINTIFF**

AND

JULIUS PKITE SAMAL DEFENDANT

JUDGMENT

1. The plaintiff is the legal representative of the estate of the late Yano Chelanga William. According to the facts stated in his plaint dated May 19, 2021 and filed on June 10, 2021, the deceased was the registered proprietor of all that parcel of land namely LR No West Pokot/Siyoi 'A'/4647 measuring approximately 1.18 hectares. Its location was as shown in Registry Map Sheet 33 and 41.
2. In was pleaded further that in 2019, the defendant caused his name to be registered fraudulently on that parcel of land, as particularized in paragraph six (6) of the plaint. The plaintiff, thus, sought the following reliefs:
 - a. The defendant's title to LR No West Pokot/Siyoi 'A'/4647 be cancelled and the registration of the said piece of land do revert to the estate of Yano Chelanga William.
 - b. An order for permanent injunction be issued against the defendant, barring him, his agents or employees from trespassing or any other way making use of LR No West Pokot/Siyoi 'A'/4647.
 - c. The defendant be condemned to pay costs of this suit.
3. In spite of proper service of summons, the defendant failed to enter appearance and file defence. Thus, the matter proceeded for formal proof.



The Plaintiff's Case

4. The plaintiff testified as PW1 on October 13, 2022. He stated that the deceased person, one Yano Chelanga William, became the registered proprietor of LR No West Pokot/Siyoi 'A'/4647 on February 9, 2016. He averred further that this continued even upon his death that occurred on December 12, 2018. He produced the deceased's death certificate in evidence and marked it as P exhibit 3.
5. His evidence was that on December 17, 2019, the defendant purported to present to the lands office, and actually succeeded to, a forged and falsified transfer form, P exhibit 1, indicating that the deceased executed it in the presence of Esq Katina Robert Mwang'at the same day. This was a year later, and it was thus unfeasible and impossible for the deceased to execute the said document. That regardless, the property was registered in favor of the defendant on August 11, 2020. He produced in evidence and marked as P exhibit 5 an extract of the title showing the impugned registration.
6. The plaintiff testified further that in a bid to have the suit property registered in his favor the defendant also presented a falsely executed application consent from the Land Control Board, which he produced as P exhibit 2, to effect the transfer. He observed that as at the time of his testimony, the defendant continued to unilaterally utilize the said property.
7. In order to have capacity to file the present suit, the plaintiff obtained grant of letters of administration ad litem from the Kitale High Court in Probate and Administration Cause No 25 of 2021. He produced it as P exhibit 4. He then testified that the land had been fraudulently transferred to the defendant by reason of the actions he had testified on. He urged the court to grant him the reliefs sought.
8. After the testimony, the plaintiff closed both his case and that of the defendant on the same day. That paved way for filing of written submissions.

Submissions

9. On October 26, 2022 the plaintiff filed submissions dated October 24, 2022. In the submissions he summed his case that the plaintiff was the legal representative of the estate of the late Yano Chelanga William who died on December 12, 2018 and that the deceased was the registered owner of all that parcel of land known as LR No West Pokot/Siyoi 'A'/4647. He submitted further that evidence showed that the defendant forged a transfer form before an advocate by name Katina Robert Mwang'at on December 17, 2019 and caused the same to be effected in his favour thus having the parcel of land registered in his favour on August 11, 2020. He submitted that the whole transaction was fraudulent and the transfer in favour of the defendant be cancelled by the court and the land reverts to the estate of the late Yano Chelanga William. He urged this court to allow the reliefs sought as enumerated in the plaint.

Analysis and Disposition

10. I have carefully considered the law, the pleadings, the oral evidence and documentary relied on. The plaintiff's uncontested evidence is that the deceased person, one Yano Chelanga William, acquired LR No West Pokot/Siyoi 'A'/4647 on February 9, 2016 as shown in P exhibit 5. Soon after, the deceased then suffered urinary obstruction that caused his death on December 12, 2018. For this evidence, the plaintiff relied on the death certificate produced as P exhibit 3.
11. Thereafter on December 17, 2019, the defendant presented a forged and falsified transfer form dated December 17, 2019 which was produced as P exhibit 1. Entries thereon indicated that the deceased executed the same in the presence of Esq Katina Robert Mwang'at. PW1 also presented in evidence an



application for consent from the Land Control Board of Kapenguria Land Control Board, as P exhibit 2. The plaintiff's contention, however, was that it was practically impossible under the circumstances for that to be as the transferor was already deceased as the time of the execution. His evidence was that notwithstanding, the property was registered in favor of the defendant on August 11, 2020 as was shown in P exhibit 5. The plaintiff lamented that the defendant continues to utilize the suit land illegally.

12. On the evidence before me, I am satisfied that the plaintiff has discharged his burden of proof, to wit, proof on a balance of probabilities that the deceased person, one Yano Chelanga William, indeed acquired LR No West Pokot/Siyoi 'A'/4647 on February 9, 2016. This was as per P exhibit 5. He died on December 12, 2018 as per P exhibit 3.
13. This court finds that unless the defendant could have proven that the deceased had resurrected temporarily on December 17, 2019 when, as per the transfer of land form purportedly executed by him on the material date, he identified to the said learned counsel by name Katina Robert by use of "his copy of ID card" and executed the said document produced as P exhibit 1, and application for consent of Land Control Board, both of which were used to complete the conveyance in favour of the defendant, this was a clear case of fraud. The known resurrections which occurred in human history are clearly documented in the Bible and books of history and Yano Chelanga William has never been one of them. It was, therefore, not only humanly impossible for such identification to take place, worse still by use of a photocopy of the National Identity Card whose number or copy were not indicated or given respectively, but also illegal for any person to purport to effect a transfer in their favor or in favour of another from the deceased person after December 12, 2018. Consequently, the defendant, on December 17, 2019 and August 11, 2020, defrauded and intermeddled with the estate of the deceased which remained reserved for that purpose, and protected under the aegis of the law. I find that the transfer from, which was produced as P exhibit 1, and the consent application form from the Land Control Board as P exhibit 2 were incapable of passing or vesting any good title, or at all, to the defendant in the circumstances.
14. Section 45 (1) of the [Law of Succession Act](#) provides that no person shall for any purpose, take possession or dispose of, or otherwise intermeddle with any free property of the deceased person except as expressly authorized by statute. Any person found guilty of such an offence is liable criminally. From the evidence adduced by the plaintiff, this is a case that the investigative agencies can take up and act on in order to find the truth under the [Act](#).
15. It is clear that the defendant was in breach of section 45 (1) of the [Law of Succession Act](#). Thus, the registration of the property in favor of the defendant as implemented on August 11, 2020 was not in conformity with the law as it was obtained by means of fraud. The consequence of that holding is that the purported transfer was an illegality and invalid for reason of offending section 45 (1) of the [Law of Succession Act](#). The remedy lies in section 80 of the [Land Registration Act](#) which provides that a court may order rectification of the register by directing any registration be cancelled or amended if satisfied that any registration was obtained, made or omitted by fraud or mistake. This suit succeeds in entirety. Consequently, I make the following orders:
 - a. An order of immediate cancellation be and is hereby issued against the issuance of title to the defendant, Julius Pkite Samal, of all that property known as LR No West Pokot/Siyoi 'A'/4647.
 - b. That the said title be reverted to the estate of Yano Chelanga William.
 - c. An order is issued to the said Julius Pkite Samal to surrender the original title to West Pokot/Siyoi 'A'/4647 to the Land Registrar, West Pokot County within 30 days of this order, for cancellation thereof.



- d. An order of permanent injunction be and is hereby issued against the defendant, baring him, his agents or employees from trespassing or any other way making use of LR No West Pokot/Siyoi 'A'/4647.
- e. The plaintiff is awarded costs of the suit.

JUDGMENT DATED SIGNED AND DELIVERED VIA ELECTRONIC MAIL THIS 8TH DAY OF NOVEMBER 2022

HON DR IUR FRED NYAGAKA

JUDGE, ELC KITALE.

