



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 329 OF 2017

ADRIANO I. AMBANI.....PLAINTIFF

VERSUS

CHRISTOPHER A. MUSATSI.....DEFENDANT

JUDGEMENT

The plaintiff avers that he discovered upon obtaining a search from the land offices that the defendant had fraudulently caused the transfer of land parcel No. South Kabras/Shamberere/1735 into his name. The plaintiff further avers that the suit land was registered in the name of Elikana Lichungu Ambani. The plaintiff also states that the defendant was bequeathed the land by his late father Joel Ambani to hold it on trust of his brothers but has refused to sub-divide and transfer it to them. The plaintiff prays for cancellation of the defendant's name from the register and the title to revert to the original owner. The plaintiff prays for judgment against the defendant for:-

- (a) Cancellation of the registration of the defendant on South Kabras/Shamberere/1735.
- (b) Costs of the suit.
- (c) Any other relief.

PW2 and PW3 corroborated the plaintiff's evidence. They confirm that the litigants are brothers and the defendant was to give the plaintiff a share of the land.

The defendant avers that this case is statute barred and should be struck out. The defendant avers that he got registered as proprietor of land parcel number South Kabras/Shamberere/1735 after judicial processes. The defendant prays that the suit be dismissed with costs as he has no cause of action against him.

This court has carefully considered the evidence and submissions therein. The Land Registration Act is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides as follows:

“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

Section 26 (1) of the Land Registration Act states as follows:

“The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner... and the title of that proprietor shall not be subject to challenge except –

- a. *On the ground of fraud or misrepresentation to which the person is proved to be a party; or*
- b. *Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”*

The law is clear that, the Certificate of Title issued by the Registrar upon registration shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner and the title of that proprietor shall not be subject to challenge except – On the ground of fraud or misrepresentation to which the person is proved to be a party; or Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

This court in considering this matter referred to the case of Elijah Makeri Nyangw'ra –vs- Stephen Mungai Njuguna & Another (2013) eKLR

where the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. The Judge in the case while considering the application of section 26(1) (a) and (b) of the Land Registration Act rendered himself as follows:-

“-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.”

It is a finding of fact the defendant is the absolute registered proprietor of land parcel No. South Kabras/Shamberere/1735. The defendant submitted that the plaintiff was his younger brother. He stays with him but his land parcel number is No. South Kabras/Shamberere/2674. Land parcel No. South Kabras/Shamberere/2674 is still in the name of their mother. Land parcel No. South Kabras/Shamberere/1735 is his land as he litigated and later by consent one Elikana Lichungu Ambani gave him the land. The plaintiff avers that the suit land was registered in the name of Elikana Lichungu Ambani. The plaintiff also states that the defendant was bequeathed the land by his late father Joel Ambani to hold it on trust of his brothers but has refused to sub-divide and transfer it to them. PW1 produced two letters from the administration (PEx1and PEx3) that state that the defendant was to hold the suit property on trust on behalf of his brothers. The brothers seem to have had a long standing dispute over the suit land. It is also not disputed that the plaintiff resides on the suit land. I find that the defendant was bequeathed the land by his late father Joel Ambani to hold it in trust for his brothers. Even though he had to go through a court case with one Elikana Lichungu Ambani whom they later reached a settlement. The defendant cannot now turn round and evict his siblings from a place they call home. The defendant in his submissions states that the suit land title in the plaint is land parcel No. South Kabras/Shamberere/735 and not land parcel No. South Kabras/Shamberere/1735and no amendment was done. I find this is a typographical error and is not fatal to the plaintiff's case. I find that the plaintiff has established his case on a balance of probabilities and I grant the following orders;

1. An order a cancellation of the suit land parcel No. South Kabras/Shamberere/1735 and the same to be registered in the name of Joel Ambani and be subjected to succession proceedings.
2. Each party to bear its own costs as they are brothers.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 2ND JULY 2019.

N.A. MATHEKA

JUDGE