



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 365 OF 2013

ROBERT KARANJA HEZEKIAH.....1ST PLAINTIFF

FLORA HEZEIAH KARANJA.....2ND PLAINTIFF

HANNAH KARANJA.....3RD PLAINTIFF

VERSUS

CHIEF LAND REGISTRAR.....1ST DEFENDANT

MERCY WANJIRU KURIA.....2ND DEFENDANT

FRANCIS JOHN W MWANGI.....3RD DEFENDANT

JUDGMENT

(Suit land having been registered in the name of the deceased at the time of his death; 2nd defendant forging a grant of letters of administration and using it to transfer the suit land to herself and later to the 3rd defendant; 2nd defendant being charged and convicted with the offences of uttering false documents and illegal transfer of land; clear that the title of the 2nd defendant was obtained fraudulently; 2nd defendant having no title to pass to the 3rd defendant; title of the 3rd defendant cancelled; order made that the title reverts back to the name of the deceased and the land to be distributed following the law of succession)

1. This suit was commenced by way of a plaint which was filed on 15 May 2013. The plaintiffs are the personal representatives of the late Hezekiah Munio Karanja (deceased). They have averred that the deceased was the registered proprietor of the land parcel Naivasha/Maraigushu Block 2/1627 (the suit land) until his death on 23 June 2011. They have pleaded that in the year 2012, the 2nd defendant, Mercy Wanjiru Kuria, fraudulently obtained forged documents purporting that she has been appointed the personal representative of the deceased. It is contended that the 2nd defendant purported to have been issued with a grant in Nakuru High Court Succession Case No. 70 of 2011 but that the said case relates to the estate of one Julius Nduati Silus and not Hezekia Munio Karanja. Armed with the grant, the 2nd defendant is said to have transferred the suit land to her name on 21 November 2012 and then transferred the title to the name of the 3rd defendant on 10 December 2012. It is pleaded that the 1st plaintiff placed a caution on 15 August 2011 but the impugned transactions were still registered. It is the position of the plaintiffs that the titles of the 2nd and 3rd defendant were thus fraudulently acquired. The plaintiffs have pleaded that they now face imminent eviction from the suit land. In this suit, the plaintiffs wish to have orders declaring them as the lawful owners of the suit land, cancellation of the title of the 3rd defendant, a permanent injunction against the 3rd defendant, general damages against the 3rd defendant for trespass, and in the alternative, indemnity for the loss of the suit land at market value against the 1st defendant.

2. A defence was filed for the 1st defendant by the State Law Office which basically stated that the 1st defendant is a stranger to the claims made in the plaint.

3. The 2nd and 3rd defendants appointed M/s Mongeri & Company Advocates to act for them and the said firm filed a notice of appointment of advocate but I have not seen any defence on record. On the hearing date, there was no appearance on the part of the 2nd and 3rd defendants, nor their counsel.

4. The 2nd plaintiff testified on behalf of all the plaintiffs. She is the widow of the late Hezekiah Munio Karanja, whereas the 1st and 3rd plaintiffs are her children. She testified that after her husband died, the plaintiffs filed a succession matter in Kiambu, being Kiambu Chief Magistrate's Cause No. 105 of 2012, and were issued with a grant of letters of administration for his estate. She mentioned that the title deed

to the suit land could not be found and she believed that it was stolen. She testified that in the October 2012, some people came to the suit land and tried to chase away her workers. She did a search which showed that the land had become registered in the name of the 3rd defendant. She reported to the police and it is then that they realized that there was a purported grant issued in Nakuru High Court P & A Cause No. 70 of 2011 in respect of her late husband's estate. However, the succession cause bearing this number was actually for the estate of Julius Silas Nduati. The false grant was issued to the 1st defendant, and she used it to transfer the title to the suit land to herself and later to the 3rd defendant. She stated that the 1st defendant was charged in Nairobi Milimani Chief Magistrate's Court Criminal Case No. 999 of 2013 with various offences and was convicted. She was sentenced to 7 years in jail. She produced the charge sheet and judgment in the said case. She believed that the 1st defendant was culpable as there had been a caution placed in the register.

5. The defendants did not offer any evidence and I invited counsel to file written submissions which they did. I have taken note of these before arriving at my decision. I do note that in his submissions, Mr. Weche, learned State Counsel, did submit that the 1st defendant was merely misled by the 2nd defendant and that the actions of the 1st defendant cannot be impugned. Mr. Kisila, learned counsel for the plaintiff did make elaborate submissions as to why judgment ought to be made in favour of his clients pressing the point that the titles of the 2nd and 3rd defendants were fraudulently obtained.

6. Having looked at the evidence, it is clear that the suit land was previously registered in the name of Hezekiah Monio Karanja. He became the sole registered proprietor of the suit land on 16 April 2008 but he died on 23 June 2011. I have seen that on 16 August 2011, a restriction was registered making an entry that the proprietor is deceased. The subsequent entry which was made on 21 November 2012 was a transfer to Mercy Wanjiru Kuria, the 2nd defendant, allegedly pursuant to a grant issued in the High Court at Nakuru, Succession Cause No. 70 of 2011. On 10 December 2012, the 2nd defendant transferred the title to the 3rd defendant who is now the registered proprietor. I have seen the documents relating to Nakuru High Court Succession Cause No. 70 of 2011. They are certainly not in respect of the estate of Hezekiah Monio Karanja, but are for the estate of Julius Nduati Silus. Even then, the petitioner in the case over the estate of Julius Nduati Silus was one Eunice Wanjiku Nduati and not the 2nd defendant. Somehow, the 2nd defendant managed to have prepared a grant of letters of administration and a confirmed grant of letters of administration for the estate of the late Hezekiah Monio Karanja, purportedly issued in Nakuru High Court Succession Cause No. 70 of 2011. The said documents purported that she, the 2nd defendant is the administrator of the late Hezekiah Monio Karanja, and that the suit land and other properties, have been distributed to her. She then used the confirmed grant to get registered as proprietor of the suit land and transferred it to the 3rd defendant. I have seen the documents indicating that the 2nd defendant was charged with five counts including obtaining registration (as proprietor of the suit land) by false pretences and uttering a false document (the false documents being the impugned grant of letters of administration). The 2nd defendant was duly convicted of these charges.

7. There is therefore no question that the 2nd defendant forged a grant purporting that it was issued in respect of the estate of Hezekiah Monio Karanja, when in fact this was not the case. She used the forged confirmed grant to procure registration as proprietor of the suit land. It is thus clear that the suit land was never properly transferred to the 2nd defendant but that it was by use of forged documents that the title to the suit land got transferred to the 2nd defendant. It is apparent that the transfer to the 2nd defendant of the title to the suit land was illegal. The 2nd defendant never obtained good title to the suit land and she had no title to transfer to the 3rd defendant.

8. The law does protect title but titles which are procured through fraud and/or misrepresentation, or titles which are procured illegally, unprocedurally or through a corrupt scheme, cannot be protected. This is provided for in Section 26 of the Land Registration Act, 2012, which provides as follows :-

26. Certificate of title to be held as conclusive evidence of proprietorship

(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor 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, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, 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.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

9. It is not clear to me why and how the suit land was transferred to the 3rd defendant and the 3rd defendant did not come to offer any explanation. I am not sure if he was party to the fraud, but it does not matter, for his title is still impeachable under Section 26 (1) (b) above, that is, that the title was obtained illegally, unprocedurally or through a corrupt scheme. As I have mentioned, the 2nd defendant had no title to transfer to the 3rd defendant, and it cannot be said that the 3rd defendant has obtained good title to the suit land. His title is thus liable to be cancelled and it is hereby cancelled.

10. The only issue left is costs. It was argued that the 1st defendant was not at fault but was misled. I do not agree. I think the 1st defendant had a duty to verify the documents that were being presented for registration from court so as to ensure that they were authentic. This was never done. The 2nd defendant was the perpetrator of the fraud and is certainly liable to costs. The 3rd defendant never came to offer any explanation as to how he became to be registered as proprietor and he has not tendered anything before this court to show that he was an innocent purchaser. Given that position, costs will be against all the defendants jointly and/or severally. I will make no orders on the claim for general damages for trespass.

11. I now make the following final orders :-

(i) That the transfer of the title to the land parcel Naivasha/Maraigushu Block 2/ 1627 to Mercy Wanjiru Kuria and later to Francis John Wanyange were illegal and/or unprocedural and the entries in their favour are ordered to be expunged.

(ii) That the District Land Registrar, Naivasha, is hereby directed to cancel the entries that gave title to Mercy Wanjiru Kuria and to Francis John Wanyange, and instead, restore title to the name of Hezekiah Monio Karanja.

(iii) That the land parcel Naivasha/Maraigushu Block 2/1627 thereafter to be distributed to the beneficiaries of the late Hezekia Monio Karanja following the law of succession.

(iv) That the 2nd and 3rd defendants are hereby permanently restrained from entering, being upon, utilizing, interfering with possession, or deriving any benefit from the land parcel Naivasha/Maraigushu Block 2/1627.

(v) That the defendants shall shoulder the costs of this suit, jointly and/or severally.

12. Judgment accordingly.

Dated, signed and delivered in open court at Nakuru this 1st day of October 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Kibet holding brief for Mr. Kisilah for the plaintiffs.

No appearance on the part of the State Law Office for the 1st defendant.

No appearance on the part of M/s Mongeri & Co. for the 2nd and 3rd defendants.

Court Assistants: Nancy Bor/Alfred Cheron.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU