



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC CASE NO. 275 OF 2015

JOSEPH KAMONDO KINGORI (*Suing as the legal representative and administrator of the estate of Kingori Kamondo (Deceased)*).....**PLAINTIFF**

-VERSUS-

PAUL NTHINWA MUMBI.....**1ST DEFENDANT**

LAND REGISTRAR, NYERI.....**2ND DEFENDANT**

JUDGMENT

1. By a plaint dated **12th November, 2015** the plaintiff brought this suit seeking judgment against the defendants jointly and severally for among other orders, an order of rectification of the title issued in respect of the suit property to wit Mweiga Block (Muthuini) 172 from the name of the 1st defendant to the name of Kingori Kamondo (deceased).
2. The plaintiff's suit is premised on the ground that the suit property was registered in the name of the deceased (it was so registered on or about 24th May, 1988) before it was registered in the name of the 1st defendant.
3. The plaintiff contends that the registration of the suit property in favour of the 1st defendant was effected by fraud.
4. Despite the 1st defendant having been served with summons to enter appearance (service was effected by way of substituted service-advertisement in a newspaper of nationwide circulation), the 1st defendant never entered appearance nor filed a statement of defence within the time indicated in the summons and at all. Consequently, on application by the plaintiff, interlocutory judgment was entered in favour of the plaintiff and the suit set down for formal proof.
5. When the matter came up for formal proof, the plaintiff reiterated his contention that the registration of the 1st defendant as the proprietor of the suit property was effected by fraud and urged the court to grant him the orders sought.
6. In support of his claim, the plaintiff produced the following documents:-
 - (i) Limited letters of administration ad litem issued to him authorizing him to sue on behalf of the estate of the deceased;
 - (ii) Certificate of death issued in respect of the deceased;
 - (iii) Letter from the chief showing that he is one of the beneficiaries of the estate of the deceased;
 - (iv) Title deed in respect of the suit property;
 - (v) Official search in respect of the suit property showing that the suit property is currently registered in the name of the 1st defendant.
 - (vi) Share certificate;
 - (vii) Ballot paper for plot number 743;

(viii) Receipts;

(ix) Extract of the green card in respect of the suit property showing that the suit property was initially registered in the name of the deceased before it was transferred to Mr. Joseph Kuira Kamau and thereafter to the 1st defendant. The green card bears an endorsement that fraud is suspected in the transfer of the suit property from the deceased.

Analysis and determination

7. As pointed out herein above, the plaintiff instituted this suit seeking judgment against the defendant for an order of rectification of the title issued in respect of the suit property from the name of the 1st defendant to the name of Kingori Kamondo (deceased).

8. The plaintiff's suit is premised on the ground that there was fraud in the transfer of the suit property from the name of the deceased to the subsequent registered owners. In support of his claim the plaintiff relied on the documents listed herein above. The documents relied on, in particular, the green card for the suit property, show that fraud is suspected in transfer of the suit property. The fact that the original title in respect of the suit property is still held by the plaintiff lends credence to the pleaded fraud since that title ought to have been surrendered to the Land Registrar when the property was being transferred from the deceased to the subsequent registered proprietor.

9. There being no evidence offered by the defendant to counter the evidence offered by the plaintiff to the effect that there was fraud in the transfer of the suit property, by dint of the provisions of **Section 26** as read with **Section 80** of the Land Registration Act, 2012 which do not afford protection to title that was acquired by fraud, I find and hold that the plaintiff has made up a case for being granted the orders sought.

10. Consequently, I find the plaintiff's suit to have merit and I allow it as prayed.

Dated, signed and delivered in open court at Nyeri this 2nd day of July, 2018.

L N WAITHAKA

JUDGE

Coram:

N/A for the plaintiff

N/A for the defendant

Court assistant - Esther