



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO. 10 OF 2013

**HESBORN JAMES OKELLO KEYO (suing as the legal administrator and
personal representative of the estate of JAMES OKEYO ASINDI (Deceased)).....PLAINTIFF**

VERSUS

WILSON OTIENO OKEYO.....1ST DEFENDANT

GRACE CAROLYNE AKINYI.....2ND DEFENDANT

CLEMENTINE NYANJWA JABUTO.....3RD DEFENDANT

VIOLET INGADO KIMANANI.....4TH DEFENDANT

THE DISTRICT LAND REGISTRAR, KISUMU.....5TH DEFENDANT

THE ATTORNEY GENERAL.....6TH DEFENDANT

JUDGEMENT

Hesborn James Okello Okeyo suing as the legal representative of the estate of James Okeyo Asindi (*hereinafter referred to as the plaintiff*) has come to court by way of amended plaint filed on 23/10/2019 against **Wilson Otieno Okeyo, Grace Carolyne Akinyi, Clementine Nyanjwa Jabutoviolet Ingado Kimanani, The District Land Registrar, Kisumu, The Attorney General**, (*hereinafter referred to as the defendants*) claiming **he is a beneficiary of the said estate for his own benefit and the dependents of the estate of the deceased as well as his estate.**

He states that at all times material to this suit the deceased James Okeyo Asindi was the registered proprietor of all that parcel of land known as Kisumu/Kanyakwar 'B'/698. That the deceased James Okeyo Asindi passed on on or about 7.9.05 intestate leaving behind administered the suit parcel of land as part of his estate.

That until 19.11.12 when the Plaintiff obtained letters of administration ad litem the estate of the late James Okeyo Asindi has remained administered and to date no confirmed grant of letters of administration has been obtained.

9. The Plaintiff avers that on or about the 13.7.06 4th Defenanant in collusion with the 1st Defenanant illegally and unprocedurally caused the subdivision of land parcel No. Kisumu/Kanyakwar/698 into land parcel No. Kisumu/Kanyakwar 'B'/1175 & Kisumu/Kanyakwar 'B'/1176.

Particulars of the fraud against the 1st and 4th defendants are:

a) Intermeddling in the estate of the deceased James Okeyo Asindi.

b) Purporting to effect a transfer of the suit parcel of land without the requisite confirmed letters of administration after the demise of the registered proprietor.

c) Dealing in a controlled land transaction without the requisite consent of the land control board.

d) Uttering forged and/or falsified consent of land board & transfer of land forms.

In a nutshell the plaintiff claims that the defendants acted fraudulently in dealing with the land belonging to the deceased.

The Plaintiff prays for judgment that:

a) A permanent injunction do issue restraining the 1st, Defendant, 2nd Defendant and 3rd Defendant as current registered proprietors of land parcel No. Kisumu/Kanyakwar B/1176, Kisaumu/Kanyakwar B/1780 and Kisumu/Kanyakwar B/1779, their agents, servants, employees whosoever and howsoever acting from transferring, alienating, selling, trespassing upon or otherwise dealing in the aforesaid parcel of land in any way that is adverse to the interests of the estate of the deceased and his beneficiaries.

b) A declaration that all dealings affecting land parcel No. Kisumu/Kanakwar B/698 post 7.9.05 were illegal, irregular, null and void and an order directing the 4th Defendant to nullify all the resultant titles flowing therefrom to wit: land parcel No. Kisumu/Kanyakwar B/1779, Kisumu/Kanyakwar /1780 and Kisumu/Kanyakwar B/1176 and rectify the register to revert to pre 7.9.05 date and in the name of James Okeyo asindi.

c) Costs and interest of the suit.

When the matter came for hearing, the plaintiff was present but the defendants and their advocates chose to stay away, despite being served. The Plaintiff gave evidence that the deceased was his father. When his father died, he owned Kisumu/Kanyakwar B/698. He produced a copy of the certificate of official search dated 14/2/2007. That the parcel of land was in the name of James Okeyo Asindi. He became administrator on 19/11/2012. That he obtained a confirmed grant of the letters of administration. The land was subdivided and is in the name of Violete Ingancho Kimanani, William Otieno Okeyo and Clementine Nyanjua Jento. That subdivision was done on 13/7/2006 the father was already deceased. The new numbers that registered are B/1178, B/1176. He had a green card for B/1175 which was opened in the name of James Okeyo Asindi on 13/7/2006 which was further subdivided on 23/2/2012. He did not participate in the subdivision. B/1175 was subdivided into new numbers that is Kisumu/Kanyakwar B/1779 and B/1780. He produced a green card for B/1779 as exhibit. That Kanyakwar B/1780 was opened on 17/4/2012 in the name of Wilson Otieno Okeyo. On 25/4/2012, it was transferred to Grace Carolyne Akinyi. A title deed was issued on the same date. That on 18/7/2012, it was transferred to Clementine Nyanjua Jabito. B/1176 opened on 13/7/2006 in the name of James Okeyo Asindi.

On 28/8/2006 it was transferred from James Okeyo Asindi to Violet Ingancho Kimanani and title deed issued to her on 30/8/2006. He was not aware of the dealings in this land. That someone informed him about the sale. He went to Land Registrar to establish the status. He found out that the land had been transferred to various persons by my father who had been in their offices. The plaintiff went to the police and was given an O.B number 4/3/30/7/2012. He lodged a complaint and he was given a letter dated 31/7/2012 which he produced as exhibit. The plaintiff averred that his father was James Okeyo Asindi whose ID no. was 5225085 of which he produced a photocopy as exhibit. He produced a consent form from Land /control /board by James Okeyo Asundi not his father dated 7/8/2006. He also produced a letter of consent issued to James Okeyo Asundi to transfer to Violet Ingancho Kimanani.

I have considered the evidence on record and do find that the plaintiff has proved beyond reasonable doubt that his father was the proprietor of the suit land when he died intestate. That he could not have transferred his suit land to the defendants when he was dead. That the act of transferring the suit land to Grace Caroline Akinyi was a fraud.

This court has reached a conclusion that the plaintiff deserves the orders sought. I do grant the following relief:

a) A permanent injunction do and is hereby issued restraining the 1st, Defendant, 2nd Defendant and 3rd Defendant as current registered proprietors of land parcel No. Kisumu/Kanyakwar B/1176, Kisaumu/Kanyakwar B/1780 and Kisumu/Kanyakwar B/1779, their agents, servants, employees whosoever and howsoever acting from transferring, alienating, selling, trespassing upon or otherwise dealing in the aforesaid parcel of land in any way that is adverse to the interests of the estate of the deceased and his beneficiaries.

b) A declaration that all dealings affecting land parcel No. Kisumu/Kanakwar B/698 post 7.9.05 were illegal, irregular, null and void and I do order the 4th Defendant to cancel all the resultant titles flowing therefrom to wit: land parcel No. Kisumu/Kanyakwar B/1779, Kisumu/Kanyakwar /1780 and Kisumu/Kanyakwar B/1176 and rectify the register to revert to pre 7.9.05 date and in the name of James Okeyo asindi.

c) Costs and interest of the suit.

Orders accordingly.

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 30th DAY OF January, 2020.

In the presence of:

MR NJOGA FOR PLAINTIFF

N/A FOR DEFENDANTS

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE