



REPUBLIC OF KENYA.

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 253 OF 2014

SITOTE MALESI.....PLAINTIFF

VERSUS

EDGAR KADENYI

MOSES M. LIHEMO

DISTRICT LAND REGISTRAR KAKAMEGA.....DEFENDANTS

JUDGEMENT

The plaintiff avers that at all material times, he was the duly registered proprietor of L.R. No. Isukha/Lubao/887. That the 2nd defendant has in the recent past violently and forcefully ejected the plaintiff and his family from the suit land on the grounds that the same belongs to him. That indeed, the plaintiff has been able to establish through a perusal of the register that the 2nd defendant is the current registered proprietor of the suit land, ostensibly having purchased the same from the 1st defendant. The plaintiff maintains that the registration of the 2nd defendant as the owner of the suit land was by fraudulent design perpetuated by the defendants jointly. The plaintiff prays for judgment against all the defendants, jointly and/or severally for:

1. Restoration of the plaintiff's name in the certificate of register of the suit land.
2. Costs of the suit.

The 1st defendant, avers that the plaintiff was the registered proprietor of the suit piece of land until 1978 or thereabout when he sold and transferred title therein to the 1st defendant who in turn sold and transferred title therein to the 2nd defendant lawfully and properly. The 1st defendant avers that, having transferred title to the 1st defendant lawfully and properly for good consideration, the plaintiff's claim is ill-conceived, an abuse of the due process of the court, unfounded and without any merit. Entirely on a without prejudice basis, the 1st defendant avers that the plaintiff's claim is an abuse of the due process of court as it is time barred in accordance with provisions of the Limitation of Actions Act. The 1st defendant denies having perpetuated any act of fraud either alone or jointly with the 2nd and 3rd defendants.

The 2nd defendant avers that as a second buyer for valuable consideration the plaintiff has no cause of action against him, that the claim is time-barred, and that all factors considered the claim is frivolous and vexatious and an attempt to abuse the court's process and is without merit. In June, 1985 and at his own instance and on willing-buyer-willing-seller basis the plaintiff sub-divided his land parcel number Isukha/Lubao/589 into two parcels Isukha/Lubao/886 and 887 and transferred parcel number Isukha/Lubao/887 to the 1st defendant who in May, 1987 transferred the same parcel to the 2nd defendant on a willing-buyer-willing-seller basis and with the full knowledge of the plaintiff.

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 2nd defendant is the registered proprietor of Land parcel No. No. Isukha/Lubao/887. The plaintiff produced a copy of the green card and the search certificate. The plaintiff avers that his father never sold the land to the 1st defendant. They took the matter to the Land Disputes Tribunal and the Appeals Committee and lost. He maintains that his father never signed the transfer documents. The 1st defendant avers that he bought the suit land from the plaintiff’s father and he paid in full. He bought it 40 years ago and it was transferred to him. He later sold the same to the 2nd defendant and transferred the same to him whereby the 2nd defendant got registered. DW2 corroborated his evidence. The 2nd defendant produced the transfer documents (DEx1 to 6). The defendants produced a letter signed by the plaintiff’s father dated 2001 admitting that he was residing on the 2nd defendant’s land and that they would vacate. The 2nd defendant’s title is indefeasible and can only be challenged if it was obtained through a fraudulent scheme. The plaintiff has not proved any such scheme. I find that the plaintiff has failed to prove his case on a balance of probabilities and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 18TH FEBRUARY 2020.

N.A. MATHEKA

JUDGE