



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

HCC 203 OF 2001

MAGIRI RINKANYA.....PLAINTIFF

VERSUS

MARIAM NURU.....1ST DEFENDANT

NURU MURITHI HASSAN.....2ND DEFENDANT

RULING

1. By an application dated 9.1.2020 the intended interested parties herein sought to be joined in this suit and that consent 27th November 2001 and recorded on 3.12.2001 as well as subsequent proceedings be set aside. They also sought for costs of the application.
2. The said application is supported by grounds on the face of the application and supporting affidavit of Salima Nuru where it is deponed that Mariam Nuru the 1st defendant didn't have the capacity to sell land No. Abogeta/U-Kithangari/859 and that the plaintiff herein did not get indefeasible title to the deceased's property. It was also deponed that plaintiff acquired the entire parcel of land which was 5 acres instead of 3 acres set out in the decree. It was further deponed that the late Mariam Nuru had not procured grant of representation and the purported sale was a nullity and also that purported grant by Kadhis court didn't exist and could not have enabled her to acquire title to deceased property and in any case she would not have been entitled to more than 1/8th of the estate.
3. The Applicant averred that the title which had been transferred to the name of the plaintiff had been cancelled and ownership of the subject land reverted back to the name of the deceased. Salima Nuru further averred that the plaintiff herein knowingly and willingly took part in a fraudulent scheme and he should not benefit from his own wrongs.
4. She claimed that they learnt of the consent as well as the decree herein on 14.10.2019 and that the application herein was filed timeously.
5. The plaintiff opposed the application vide Replying Affidavit sworn on 5th February 2020 and averred that Mariam Nuru the mother of the intended Interested Parties (now deceased) entered into an agreement to sell to him 3 acres of land in Abogeta/U-Kithangari/859 on 12.6.2001 and on 3.12.2001 a consent judgment was entered in which the 1st Defendant was to transfer the 3 acres upon the plaintiff paying the balance of purchase price Kshs 105,000/-
6. He said that LR Abogeta/U-Kithangari/859 was sub-divided into LR 1467 and 1468 being 3 and 2 acres respectively and that he took LR 1467 subsequently 1st defendant sold to him LR 1468 at Kshs 420,000/= on 6.12.2001.
7. He said he had occupied the 2 parcels for 19 years and developed the same with his 2 sons occupying LR one of the parcels. He argued that when the registration of the subdivisions were cancelled he was never involved.
8. Salima Nuru in a further supporting affidavit sworn on 21.7.2020 averred that the Replying Affidavit was marred with falsehoods and misconceptions of the law which should be disregarded and the agreement between plaintiff and their mother was void as their deceased mother had not capacity to deal with the estate of their father Kinoti Nuru.
9. She averred that the plaintiff didn't show how he acquired the balance of 2 acres after entering into consent for transfer of 3 acres.
10. The plaintiff raised a preliminary objection to the application dated 9.1.2020 to the effect that this court lacks jurisdiction as this is a land matter and that the application is none suited and otherwise an abuse of the court process.
11. The Preliminary objection was canvassed by way of written submissions. Upon considering the said submissions, I have come to the conclusion that issues of fact which will require the courts interrogation have been raised in the intended Interested Parties application and therefore cannot pass as Preliminary Objection. For instance the Applicants are saying that the Respondent should explain how he acquired 2

acres of land if the consent entered into concerned 3 acres of land out of the suit property. The consent herein was entered into long before the promulgation of the constitution in 2010 and before the Environment and Land Court was constituted. It is important and in the spirit of Article 159 of the Constitution of Kenya 2010 that the court deals with the substance of the Interested Parties application rather than dismissing it on a technicality. The Preliminary Objection is therefore dismissed with no orders as to costs.

HON.ANNE ADWERA ONG'INJO

JUDGE

RULING DATED DELIVERED AND SIGNED AT MERU BY EMAIL THIS 1ST OCTOBER 2020.

HON. ANNE ADWERA ONG'INJO

JUDGE

IN THE PRESENCE OF:

CA: Kinoti

Mr Mutuma Advocate for Intended Interested Parties

Ms Kiautha Arithi Advocate for Plaintiff – No Appearance

HON.ANNE ADWERA ONG'INJO

JUDGE