



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

CIVIL SUIT NO. 34 OF 2018

EGLYNE CHEPCHIRCHIR CHOGE.....1ST PLAINTIFF

MIRRIAM ARUM CHOGE.....2ND PLAINTIFF

CHRISTIAN CHOGE.....3RD PLAINTIFF

JOSEPH ANG'ANG'A.....4TH PLAINTIFF

(Suing as Administrators to the

Estate of Simeon Kiptum Choge (Deceased).

VERSUS

SINGA HAM EDAMBO.....1ST DEFENDANT

WILSON OMOKE EDAMBO.....2ND DEFENDANT

AGGREY OYAVO EDAMBO.....3RD DEFENDANT

ALBERT MADETE EDAMBO.....4TH DEFENDANT

JUDGMENT

By a plaint dated 12th February 2018, the plaintiffs herein sued the defendants jointly and severally seeking for the following orders that:-

- a) A permanent injunction do issue restraining the defendants jointly or severally by themselves, their agents, servants or any other person or persons through whom they may act from trespassing into, sub-dividing, surveying, alienating, selling, leasing to any third party or parties, harvesting trees and/or crops in land parcel No. NANDI/KAPKERER/279 and/or dealing with land parcel No. NANDI/KAPKERER/279 in any other way detrimental to the interests of the plaintiff and/or the Estate of the late Hon. Simeon Kiptum Choge.
- b) An order do issue directing the Lands Registrar to cancel all entries made on 9/11/2012 in favour of the defendants in NANDI/KAPKERER/279.
- c) An Order of declaration do issue to the effect that land parcel NANDI/KAPKERER/279 is an asset that forms part of the Estate of the late Hon, Simeon Kiptum Choge and does not belong to the defendants or to the estate of Elly Edambo Kamidi.
- d) An Order do issue transferring land parcel known as No. NANDI/KAPKERER/279 to the Estate of the Hon. Simeon Kiptum Choge.
- e) The Deputy Registrar do sign the transfer documents on behalf of the defendants including the application for Consent of the Land Control Board if need be in favor of the plaintiffs.

The plaintiffs filed an application for injunction contemporaneously with the suit but before the hearing of the application, the defendants filed a notice of preliminary objection. The application was heard together with the objection and the court ordered that an order of injunction do issue pending the hearing and determination of the suit.

PLAINTIFFS' CASE

PW1 Joseph Choge Anganya stated that Simeon Kiptum Choge was his late brother and that he is one of the administrators of his estate. He testified that the administrators have been staying and utilizing the suit land No. NANDI/KAPKERER/279

It was his testimony that there was a Land Adjudication case between Elly Edambo and Jonathan Kiprotich where the decision was that the land be given to the late Simeon Kiptum Choge which proceedings were produced in court. That an objection was filed and a decision to the objection was produced in court.

Further that an appeal was lodged and was determined in favor of Simeon Kiptum Choge. PW1 also stated that the defendants filed a Succession Cause where they listed the suit parcel among the properties for distribution which was done in favour of the defendants resulting in the opening of a green card on 22nd January 2002 in the name of Elly Edambo as the registered owner of the suit land.

On cross examination, he stated that neither he nor the defendants have erected a house on the suit land and that the house that is on the land belonged to the initial owner. He confirmed that there was a road that was constructed on Serem- Gambogi but he did not see the gazette notice for compensation for the people who were affected. It was his evidence that Elly Edambo could not be compensated for land that did not belong to him.

PW1 also stated that the Kisumu Succession Cause No. 58 granted land to the defendant but he did not move the court to have the grant revoked. At the time of filing the suit, the land was still under the adjudication process. In re-examination, he stated that the gazette notice dated 14th February 1997 was about the intention to acquire land on Gambogi- Serem road and not for compensation.

PW2 Solomon Chepkwony stated that Simeon Choge was his neighbor who bought plot No. 279 from Jonathan Kipngetich and that the family of the late Choge are the ones in occupation of the suit land. On cross examination he admitted that he was not a witness in the sale transaction and that there is no house on the land save for a church.

PW3 Jonathan Kipngetich stated that he was given the suit land by his grandmother Chemasang and later sold it to Simeon Choge for Kshs. 6,000. It was his evidence that he never sold the land to Elly Edambo.

On cross examination he denied ever selling land to two people and that the refunded Kshs. 3,000 that he had borrowed from Elly Edambo in 1965 when he had already moved to Ndalat.

PW4 Grace Odinga from the Ministry of Lands stated that from the records the initial owner of the suit land was Simeon Kiptum Choge. This was later deleted and replaced with the name of Elly Edambo Kamidi. It was further deleted and the name of Simeon Kiptum Choge inserted again. The proceedings from the land adjudication committee was that the plaintiff Elly Edambo sued the wrong party and decided that the land belonged to Simeon Kitum Choge.

An objection was filed by the 1st defendant which was allowed and the decision set aside. An appeal was filed by Simeon Kiptum Choge against the decision and the outcome was that the dispute had been sorted out vide Kapsabet case no. 1 of 1972. The remarks on the appeal was that the appeal is allowed and the restriction to be removed and that plot No. 279 be registered in the name of the Appellant.

It was PW4's evidence that the Land Adjudication Officer has powers to make alterations in the rough book.

PW5 Violet a Land Registrar from Nandi County confirmed that the letter dated 5th June 2016 emanating from the Chief Land Registrar forwarding the decision of the Appeal in respect of plot No. 279 to the County Land Registrar. The adjudication records were also attached to the letter. PW5 stated that at the end of an adjudication process, a record is produced and a register is opened. The record is required to enable opening of a register which was done on 22nd January 2002 in the name of Elly Edambo.

On cross examination she stated that the registration of Elly Edambo was as per the documents that were in place. They had not been served with the letter from the Chief Land Registrar.

PW6 Mariam Choge stated that his father purchased plot No. 279 from Jonathan in 1967 and was registered in the name of Simeon Choge in 1972. She could not tell how the name of Elly Edambo appeared on the green card. She came to know about the objections after the hearings and that there was a caution lodged by Choge after realizing that the land was registered in someone else's name.

On cross examination, she stated that her late brother was not buried on the suit land and that it is Joseph utilizing the land. That she learnt of the appeal when she took over the administration of the estate

PW7 Eglyne Choge testified that plot no.279 measuring approximately 20 to 25 acres belonged to his late husband Simeon Choge having purchased it from Jonathan Nyaoke. The Choge family has been in occupation since then.

DEFENDANTS' CASE

DW1 Singa Ham Edambo adopted his statement and produced his documents as per the list of documents filed. He stated that his father bought land from Jonathan Nyoake before the adjudication process was finalized.

He further stated that he was not present at the adjudication board and the appeal committee. Before filling the Succession cause, he conducted a search and found out that there was a restriction.

He was not aware of the appeal that was lodged by the late Choge. The appeal was in favor of the late Choge. His father died before processing the title. Lastly, that it was not the responsibility of Elly Edambo to transfer the land to Choge. He stated that the restriction filed did not bar the defendants from filing the Succession Cause since by 2002 there was no appeal pending.

ANALYSIS AND DETERMINATION

From the onset the court is at a loss why this case was filed in this court in the first place. The plaintiff wants the court determine that the suit land NANDI/KAPKERER/279 forms part of the estate of the Hon. Simeon Kiptum Choge and an order for cancellation of the title in the name of the defendants.

The issues for determination is as to whether the plaintiff's suit is proper before the court, whether the suit land belonged to the late Simeon Choge and whether the plaintiff is entitled to the orders sought.

The dispute between the plaintiffs and the defendants has been adjudicated in many fora including adjudication committees, appeal to the Minister, Kapsabet Magistrates' Court, Kisumu High Court through a Succession Cause and finally to this court where there have been different outcomes.

It is on record that the defendants hold title to the land which was issued to them upon registration of the certificate of confirmation of grant and that the Chief Land Registrar had registered a restriction on the said parcel which, Singa Ham Edambo who is enjoined as the 1st defendant herein and who was the administrator of the estate of the late Elly Edambo Kamidi moved the High Court in Kisumu through Misc. Civil Application No. 160 of 2009 to cancel, thereby enabling the title to be transferred to the defendants.

It is further on record that the late Simeon Kiptum Choge had filed an application in Kisumu High Court succession File No. 58 of 2004 to have the grant revoked but passed on before the application was heard and the plaintiffs took over the proceedings before Justice Majanja of the High Court in Kisumu after substitution but the Judge recused himself for personal reasons. The matter then went before Justice Cherere of the High Court of Kenya Kisumu who ruled that she had no jurisdiction to entertain the matter therefore necessitating the filing of this suit.

The 1st defendant filed the above Succession Cause in respect of the estate of Eli Edambo Kamidi. The grant was confirmed on 19th May 2006 by Justice J.W Mwera and the land ordered distributed to the defendants. The plaintiffs cannot challenge the title to the land held by the defendants pursuant to a Succession cause that was determined and the grant not yet revoked. If they believed the proceedings in that cause were founded on false misrepresentation on the part of the defendants or any of them, that is but a ground for revocation or annulment of the grant under Section 76 of the Law of Succession Act and Rules 44 of the Probate and Administration Rules.

I find that this court is not the right forum to find that the suit land forms part of the estate of the deceased Simeon Kiptum Choge as a Succession Cause had been filed and such grant has not been revoked.

Having said that I find that the court does not have jurisdiction to grant the orders sought and is therefore dismissed with costs to the defendants

DATED and DELIVERED at ELDORET this 5TH DAY OF MARCH, 2020

M. A. ODENY

JUDGE

JUDGMENT read in open court in the presence of Mr.C.F. Otieno for Plaintiff and Mr.Musiega for Defendant

Mr. Yator – Court Assistant