



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC NO. 276 OF 2014**

**BARKE AWADH KHAMISI** (Suing on her own behalf and  
also on behalf of her father **AWADH KARAMA KHAMISI**).....**PLAINTIFF**

**AND**

**CYNTHIA WERE AYAKO**.....**1<sup>ST</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR, MOMBASA**.....**2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff, Barke Awadh Karama Khamisi (suing on her behalf and also on behalf of her late father, Awadh Karama Khamisi) instituted this suit by a plaint dated 14<sup>th</sup> October, 2014. The plaintiff is seeking for judgment against the defendants for:

- a. Cancellation of the Title Deed to PLOT NO. MOMBASA/BLOCK XVI/649 in the 1<sup>st</sup> Defendant's names and issuance of a new Title Deed to PLOT NO. MOMBASA/BLOCK XVI/649 in the names of AWADH KARAMA KHAMISI
- b. The rectification of the Green Cards to PLOT NO. MOMBASA/BLOCK XVI/649 to reflect the position as at 3<sup>rd</sup> February, 2006.
- c. A mandatory and perpetual injunction restraining the 1<sup>st</sup> Defendant, her agents, servants, from transferring, selling, alienating, assigning and or dealing with PLOT NO. MOMBASA/BLOCK XVI/649 in any manner whatsoever.
- d. Costs and interest of the suit.

2. The Plaintiff's case is that at all material times to this suit, the late Awadh Karama Khamis was the registered owner of PLOT NO.MOMBASA/BLOCK XVI/649 situate within Majengo area, Mombasa Island. The plaintiff avers that unknown to her, the 1<sup>st</sup> defendant through forgery and misrepresentation caused the said parcel of land to be registered in her names. The plaintiff has given the particulars of fraud and misrepresentation by the 1<sup>st</sup> defendant as follows:

- a. Presenting false and forged transfers to the 2<sup>nd</sup> Defendant for Registration.
- b. Purporting to have purchased PLOT NO.MOMBASA/BLOCK XVI/649 which was not the position.
- c. Presenting the Original title to the plot no. MOMBASA/BLOCK XVI/649 to the 2<sup>nd</sup> Defendant with the full knowledge that the said title had been fraudulently obtained by herself, and the only person capable of dealing with the parcel of land was the legal representative of the Estate of Awadh Karama Khamis.
- d. Causing the 2<sup>nd</sup> defendant to alter the Green Cards of PLOT NO. MOMBASA /BLOCK XVI/649 with the full knowledge that her actions were fraudulent and misrepresentation.
- e. Obtaining the title Deed of PLOT NO. MOMBASA/BLOCK XVI/649 and collecting the said title from the 2<sup>nd</sup> Defendant with the full knowledge that her actions reeks of fraud.

**f. Presenting false receipts for payment of stamp duties and rates clearance certificate from the Municipal Council of Mombasa which actions she knew reeks fraud and misrepresentations.**

3. The defendants were served with summons to enter appearance. The 2<sup>nd</sup> defendant filed defence on 10<sup>th</sup> December, 2019 which basically denied the averments in the plaint. The 2<sup>nd</sup> defendant denied knowledge of particulars of fraud and averred that if it issued title deed to the suit property to the 1<sup>st</sup> defendant, the same was in good faith and after fully satisfying itself that the information given to it by the 1<sup>st</sup> defendant was accurate.

4. The 1<sup>st</sup> defendant did not enter appearance or file defence and the suit against her proceeded by way of formal proof on 10<sup>th</sup> December, 2019 when the plaintiff testified and did not call any witness. The 2<sup>nd</sup> defendant did not call any witness and therefore its case was also closed without any evidence tendered in support of the defence that was filed.

5. The plaintiff relied on her witness statement filed on 4<sup>th</sup> November 2014. The plaintiff testified that her late father Awadh Karama Khamis who is now deceased owned the suit property. That the original Title Deed got lost and the 1<sup>st</sup> defendant may have found it and fraudulently used it to transfer the suit property into her name.

6. The plaintiff stated that when she discovered the forgery by the 1<sup>st</sup> Defendant, she made a report to the Criminal Investigation Department which investigated and the investigation revealed that the 1<sup>st</sup> defendant had fraudulently registered herself as owner of the suit property using forged documents. That the 1<sup>st</sup> defendant was arrested and charged in Criminal Case No. 341 of 2011 R-v- Cynthia Were Ayako with the offences of making a document without authority contrary to Section 357 (a) of the Penal Code, Forgery contrary to Section 349 of the Penal Code and obtaining registration of land by false pretences contrary to Section 320 of the Penal Code. The plaintiff stated that the 1<sup>st</sup> defendant was released on bond but later jumped bail and has absconded to date. The plaintiff reiterated that the suit property belonged to her late father and had not been sold or transferred to the 1<sup>st</sup> defendant or anyone else. The plaintiff produced the entire list of documents dated 14<sup>th</sup> October, 2014 which include Title Deed for the suit land in the name of Awadh Karama Khamis, title deed in the 1<sup>st</sup> defendant's name, Limited Grant issued to the Plaintiff and charge sheet in the criminal case against the 1<sup>st</sup> Defendant.

7. The court has carefully considered the evidence on record. The issue that calls for determination is whether the plaintiff has proved her case to the required standard and whether she is entitled to the prayers sought.

8. The plaintiff has produced documentary evidence that show that the suit property was registered in the name of the plaintiff's late father, Awadh Karama Khamis. The 1<sup>st</sup> defendant had not challenged the plaintiff's evidence that she acquired the property fraudulently. Indeed the plaintiff has tendered evidence showing that there were investigations by the police which culminated in the arrest and charging of the 1<sup>st</sup> defendant over the manner the 1<sup>st</sup> defendant caused the suit property to be registered in her name. The plaintiff's evidence remains uncontroverted. I find that the plaintiff has proved her case on a balance of probabilities.

9. The upshot is that judgment is entered for the plaintiff in terms of prayers (a), (b) and (c) of the plaint. The plaintiff will have costs of the suit to be borne by the 1<sup>st</sup> defendant.

It is so ordered.

**DATED, SIGNED and DELIVERED at MOMBASA this 4<sup>th</sup> day of March 2020.**

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**C.K. YANO**

**JUDGE**

**IN THE PRESENCE OF:**

Lewa holding brief for Okanga for plaintiff

Mwadeje for 2<sup>nd</sup> defendant

No appearance for 1<sup>st</sup> defendant

Yumna Court Assistant

**C.K. YANO**

**JUDGE**