



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 136 OF 2010

SONDHI AASE JORID

RANJIT SONDHI (The Legal Representative of the Estate of

Deceased) **AASE JORID SONDHI)**.....**PLAINTIFF**

VERSUS

DENMAN PROPERTIES LIMITED.....**1ST DEFENDANT**

DISTRICT LAND REGISTRAR, KILIFI.....**2ND DEFENDANT**

THE HON. ATTORNEY GENERAL.....**3RD DEFENDANT**

JUDGMENT

BACKGROUND

1. By a Plaint dated 11th November 2010 as amended on 11th July 2012 and re-amended on 23rd November 2017, Ranjit Sondhi suing in his capacity as the Legal Representative of the estate of Aase Jorid Sondhi (the Plaintiff) prays for Judgment against the Defendant for:-

a) A declaration that the Certificate of Title held (in the name of) the late Aase Jorid Sondhi dated 14th May 1980 is valid and confers absolute proprietorship of Plot No. Kilifi/Jimba/342 to the Plaintiff.

b) An order directing the Kilifi District Land Registrar to cancel the Title Deed (if any) held by the 1st Defendant in respect of Plot No. Kilifi/Jimba/342 and issue the title deed in the name of the legal representatives of the deceased.

c) A declaration that Entries Nos. 6 and 7 in the Land Register entered on 23/8/2006 purporting to register Denman Properties Ltd as the proprietor of Title No. Kilifi/Jimba/342 and the Title Deed issued in its name to be null and void and of no legal effect, and the same should be deleted forthwith.

d) A permanent injunction preventing (sic) the 1st Defendant by himself, his servants and agents from dealing in any manner whatsoever with Title No. Kilifi/Jimba/342.

e) Costs of the suit.

2. It is the Plaintiff's case that at all times material, Aase Jorid Sondhi (now deceased) was the registered proprietor of the suit property pursuant to a certificate issued by the District Land Registrar, Kilifi (the 2nd Defendant) on 14th May 1980. Sometimes in the year 2009 however, the deceased came to learn that the property had been registered in the name of Messrs Denman Properties Ltd (the 1st Defendant).

3. The Plaintiff avers that the purported registration of the 1st Defendant as the proprietor of the suit property by the 2nd Defendant is illegal and fraudulent as the same was done without the knowledge and/or authority of the deceased and/or her legal representatives.

4. The Plaintiff further asserts that the purported registration of the 1st Defendant as the proprietor of the property did not transfer or vest any proprietary interest to the 1st Defendant and that the title issued pursuant to that registration is null and void.

5. But in its Statement of Defence dated and filed herein on 25th November 2010, Denman Properties Ltd(the 1st Defendant) denies the averments in the Plaint and avers instead that it is the registered proprietor of the suit premises having purchased the same for value from the registered owner one Ali Mohamed Ali on 23rd August 2006.

6. The 1st Defendant denies that its registration was fraudulent and/or that it colluded with the 2nd Defendant as alleged or at all. Accordingly the 1st Defendant denies that the Plaintiff is entitled to any of the orders sought herein.

7. Similarly, the District Land Registrar Kilifi (the 2nd Defendant) and the Honourable the Attorney General (the 3rd Defendant) deny that the Plaintiff was the registered owner of the suit property. In a Joint Statement of Defence filed on their behalf by the Honourable the Attorney General, the Defendants deny ever taking part in a conspiracy to defraud or in any manner whatsoever engaging in any fraudulent activities in regard to the suit property.

THE PLAINTIFF'S CASE

8. At the trial herein, the Plaintiff called one witness in support of his case.

9. PW1-Kuldip Sondhi told the Court that the original Plaintiff herein –Sondhi Aase Jorid was his wife. He testified that the suit property had been registered in the name of his wife and that he did not know the 1st Defendant. Sometime on 27th April 2009, they had received a letter from the Municipal Council of Malindi alleging that the 1st Defendant was the registered owner of the land.

10. PW1 told the Court that they had purchased the suit property from one Robert Githinji Mureithi after which the property was transferred to his wife's name on 14th May 1980. Thereafter they had regularly paid all rates and other fees due from the suit property to the relevant authorities.

THE DEFENCE CASE.

11. On their part, the Defendants called two witnesses in support of their respective cases.

12. DW1-Sophia Abdillahi Chacha is a Director of the 1st Defendant. She told the Court that the 1st Defendant is the registered Proprietor of the suit property measuring about 1.3 Ha since 23rd August 2006. DW1 testified that they purchased the land from one Ali Mohamed Ali at a consideration of Kshs 6,175,000/-.

13. DW1 told Court that before the purchase and transfer of the land, she personally visited the 2nd Defendant's Registry at Kilifi and undertook an official search of the property. The property had previous owners but the Plaintiff was not one of them. They bought the land from the registered owner.

14. DW1 testified that after the purchase, they erected a wall around it and put up a Guard house for a guard to stay and guard the premises against intruders. Sometimes in 2010, they received a letter from the Plaintiff's Advocates enquiring about the ownership of the Plot of land. They responded through their Advocates on 28th October 2010 stating that they were the registered proprietors.

15. DW1 told the Court that they were subsequently served with summons in this suit. It is her case that they are the owners of the land which remains registered in the 1st Defendant's name to-date.

16. DW2-Stella Kinyua Gatwiri is the Land Registrar Kilifi. DW2 testified that from the Original Records held at their office, the suit property was first allotted to Sidi Kangu Kibarua who then sold the land to Ali Mohamed. The said Ali Mohamed later on 23rd August 2006 sold the land to the 1st Defendant who remains the owner to-date.

Analysis and Determination

17. I have perused and considered the pleadings filed by the parties herein, the oral testimonies of the witnesses and the evidence adduced at the trial. I have equally perused and considered the Written Submissions as filed herein by the Learned Counsels representing the parties herein.

18. This suit was initially filed by Ms Aase Jorid Sondhi on 11th November 2010. Ms Sondhi would later on pass away on 22nd August 2015 and her place in these proceedings would be taken by her son Ranjit Sondhi upon being granted a Limited Grant of Letters of Administration ad Litem on 26th January 2016.

19. The Plaintiff's case is that her deceased mother purchased the suit property from one Robert Githinji and that the title thereto was transferred to her name on or about 14th May 1980. In support of their case, the Plaintiff called one witness-Kuldip Sondhi (PW1) a father of the current Plaintiff and the husband of the deceased. PW1 told the Court that they purchased the property which was subsequently registered in the name of his wife in 1980 as aforesaid.

20. He told the Court that after the transfer of the property to his wife's name they had regularly paid land rates to the relevant authorities as by law required. They were therefore surprised when sometime in the year 2009, they came to learn via a letter emanating from the Municipal Council of Malindi that the property had since been registered in the name of the 1st Defendant.

21. It is the Plaintiff's case that the purported registration of the 1st Defendant as the proprietor of the suit property is illegal and fraudulent as the same was done without their knowledge and/or authority.

22. The Defendants on their part denied the allegations of fraud. It was the 1st Defendant's case in particular that contrary to the Plaintiff's averments, it was the registered proprietor of the suit property having acquired the same from one Ali Mohamed Ali on 21st August 2006. The 1st Defendant's director Sophia Abdillahi Chacha (DW1) told the Court that they purchased the suit property at a consideration of Kshs 6, 175,000/- after carrying out due diligence and official searches at the 2nd Defendant's offices which revealed that the Vendor was the registered owner of the property.

23. On their part the 2nd and 3rd Defendants called as their witness the current Kilifi County Land Registrar one Stella Kinyua Gatwiri (DW2). Relying on the available records in their office, DW2 testified that the first allottee of the suit property was one Said Kaingu Kibarua who later sold the property to Ali Mohamed Ali. It is the said Ali Mohamed Ali who subsequently sold and transferred the land to the 1st Defendant on 23rd August 2006.

24. Arising from the circumstances herein, it was apparent that both the Plaintiff and the 1st Defendant are in possession of title deeds for the same property-Kilifi/Jimba/342. While the Plaintiff's title was issued on 14th May 1980, that of the 1st Defendant was issued on 23rd August 2006.

25. The Plaintiff asserts that the 1st Defendant's registration as proprietor of the title was obtained by fraud and/or collusion with the 2nd Defendant and other officials of the Government as represented by the 3rd Defendant herein. The allegation of fraud of course arises from the fact that as the Plaintiff's witnesses put it, they already had title to the property and the same was issued by the 2nd and 3rd Defendants without any reference to the then registered owner.

26. As was stated by the Court of Appeal in *Kuria Kiarie & 2 Others –vs- Sammy Magera (2018) eKLR*:-

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleadings. The acts alleged to be fraudulent must, of course, be set out, and then should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

27. In the matter before me, the particulars of the alleged fraud herein are given under Paragraph 7A of the Re-Amended Plaint as follows:-

“Particulars of Fraud and Illegality by the 2nd Defendant

i) Registering the 1st Defendant as the Proprietor of the suit property in total disregard of the deceased's title;

ii) Issuing a Title Deed for the suit Property to the 1st Defendant whilst in full knowledge that the deceased's Land Certificate was still in force thereby resulting in apparent double ownership; and

iii) Failing, omitting, and/or negligence to make entries in the Register.

28. As it were, the circumstances under which the 1st Defendant came to be registered as the proprietor of the suit property were laid bare in the testimony of DW2. During her cross-examination herein, DW2 told the Court that certain irregularities were discovered in the manner in which parcels of land were initially adjudicated in the relevant Kilifi/Jimba Adjudication Section. As a result of the irregularities, the Government recalled the previous records for re-allocation.

29. DW2 told the Court that their parcel file with the Green Card for the suit property was thereafter reconstructed and re-opened in 1986 with the Government of Kenya as the proprietor thereof. The property was then allocated on 28th January 2000 to one Sidi Kaingu Kibarua, who then sold it to Ali Mohamed Ali who eventually on 23rd August 2006 transferred the same to the 1st Defendant.

30. From the Plaintiff's evidence herein, it was evident that they knew of the Government action as they never took any action on the suit property from the 1980s until sometime in the year 2009 almost 30 years later when they claim to have received a letter from the Municipal Council of Malindi alerting them that the suit property belonged to the 1st Defendant. By that time, the 1st Defendant had been having a wall erected on the property for some three (3) years. Their attempt to do an official search was apparently thwarted when it was explained to them that their parcel was under a restriction imposed by the Government.

31. Given the circumstances in which the 1st Defendant took possession of the suit property, I am not persuaded that there was any fraud or collusion and/or that they would have known about the Plaintiff's interest in the land. The Plaintiff had never taken possession of the land and the name of the deceased and/or that of her Legal Representative did not appear on the Green Card from as early as 1986.

32. I was therefore unable in the circumstances herein to see how the 1st Defendant's title could be said to have been acquired illegally,

unprocedurally or through a corrupt scheme to warrant its cancellation. On the contrary, it was clear to me that the 1st Defendant did due diligence prior to the purchase and was an innocent purchaser thereof for value without notice of any title or interest held by the Plaintiff.

33. In the premises, I was not persuaded that the Plaintiff had proved his case against the Defendants to the required standard.

34. This suit is accordingly dismissed with costs to the Defendants.

Dated, signed and delivered at Malindi this 29th day of April, 2020.

J.O. OLOLA

JUDGE