



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC NO. 192 OF 2017

PAUL FRANCIS NJOROGI PLAINTIFF

VERSUS

JOHN MBURU KIRIBA DEFENDANT

JUDGMENT

By a plaint dated 3rd May 2017 the plaintiff herein sued the defendant for a declaration that the defendant fraudulently acquired title to land reference No. UASIN GISHU/ILLULA/1085 and that the parcel of land belongs to the estate of the deceased Francis Kiriba Thiongo plus costs of the suit.

The defendant was served with summons to enter appearance but he never filed any response to the suit and therefore the matter proceeded for formal proof.

It was the plaintiff's evidence that he is the administrator of the estate of the deceased Francis Kiriba Thiongo who had purchased the suit land from PW2. He stated that the deceased passed away before he could transfer the suit land into his name. It was further the plaintiff's evidence that the defendant is his younger brother. He stated that the defendant refused to register the title jointly in their names and later became elusive. The plaintiff produced a copy of the title and a search certificate as exhibits before the court.

The plaintiff also testified that when their father died, the defendant went ahead and took the title to the suit land and registered in his name and when the plaintiff inquired why he had registered the same in his name he claimed that the land belonged to him.

It was the plaintiff's evidence that the defendant fraudulently registered the title to the suit land in his name and further charged it as security for a loan from Equity Bank for 1.1 million. He therefore prayed for judgement to be entered as prayed as per the plaint.

PW2 testified and stated that he sold the suit land to the deceased and that he did not sell it to the defendant. He produced a sale agreement dated 8/9/86 as an exhibit before the court and testified that the defendant forged his signature to obtain a transfer of the suit land. It was also PW2's evidence that by the time the deceased died he had not transferred the suit land to him so he wondered how the defendant managed to get a transfer of the same.

The plaintiff therefore closed his case. Counsel for the plaintiff filed written submissions and reiterated the evidence of the plaintiff. He submitted that the issues for determination are as to whether the land was purchased by the deceased and whether the transfer was fraudulent?

Counsel submitted that from the evidence tendered it has been established that the suit land was sold by

PW2 to the deceased and PW2 did not transfer the suit land to the defendant. He further submitted that it was further proved that the suit land is currently registered in the defendant's name. It was his submission therefore that the plaintiff has established his case against the defendant to the requisite standard. He urged the court to enter judgement for the plaintiff as prayed in the plaint.

Analysis and Determination.

This is a case which proceeded by way of formal proof. The defendant was given an opportunity to give his side of the story but he neither entered appearance nor filed a defence. He was also served with a hearing notice to attend court but he never showed up. This means that the plaintiff's case was undefended. The issues for determination is whether the suit land belonged to the deceased father of both the plaintiff and the defendant and whether the defendant fraudulently transferred the said suit land in his name.

From the evidence on record it is clear that the suit land was bought by the deceased Francis Kiriba Thiongo as per the sale agreement that was produced by PW2. PW2 also gave evidence that he sold the land to the plaintiff's father and not the defendant and he is not aware how he managed to transfer the land in his name as he did not sign for him any transfer forms. He also stated that by the time the plaintiff's father died he had not yet transferred the land to him. This evidence points out to two things and answers the two issues. That the land belonged to the deceased Francis Kiriba Thiongo and that the defendant fraudulently transferred the land to himself.

Section 24, 25, and 26 of the Land Registration Act of 2012 is very clear on indefeasibility of title but the rider is that if the title is acquired by way of misrepresentation or fraudulent means then the same can be cancelled or revoked. This is one such case, as it has been proven that the deceased died before the title was transferred in his name and PW2 did not sign any transfer papers to the defendant.

A party should not be allowed to enrich himself or herself with a process that is flawed and fraudulent. The courts must intervene and not allow fraudulent transactions to take root. From the above and having considered the pleadings in totality together with the evidence and submissions I find that the plaintiff has proved his case against the defendant on a balance of probability and enter judgement as prayed.

I therefore make a declaration that the defendant fraudulently acquired title to land reference No. UASIN GISHU/ILLULA/1085 and that the parcel of land belongs to the estate of the deceased Francis Kiriba Thiongo.

The defendant to pay costs of the suit.

Dated and delivered at Eldoret this 7th day of March, 2018

M.A ODENY

JUDGE

Judgment read in the open court in the presence of Mr. Kiprono holding brief for Mr. Momanyi for Plaintiff and in the absence of the defendant.

Ms.Topister: Court Assistant.