



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 60 OF 2016

SOSPETER NYAGA MWATHI.....APPLICANT

(Suing in his capacity as the Legal

Representative of MORI NGANGA)

VERSUS

LUCY MUTHONI KIBOCHA Alias

ANNA NYAWIRA KARUBIU.....RESPONDENT

JUDGMENT

Citing *Article 159 (2) (d) of the Constitution and Section 80 (1) of the Land Registration Act*, the Applicant **SOSPETER NYAGA MWATHI** filed this Originating Summons against the Respondent **LUCY MUTHONI KIBOCHA Alias ANNA NYAWIRA KARUBIU** seeking the following orders:

- 1. A declaration that L.R No. MWERUA/KAGIO/1012 was fraudulently transferred from the name of MORI NGANGA to the name of ANNA NYAWIRA KARUBIU while the said MORI NGANGA was already deceased.***
- 2. That there be a declaration that entries No. 2, 3 and 4 in the register of L.R No. MWERUA/KAGIO/1012 were and are fraudulent, null and void.***
- 3. That the Honourable Court be pleased to order the rectification of the register of L.R No. MWERUA/KAGIO/1012 by cancellation of entries No. 2, 3 and 4 forthwith.***

The Summons was supported by the affidavit of the Applicant to which were annexed several documents including the certificate of death of **MORI NGANGA** (the deceased herein), a limited grant of letters of administration issued to the Applicant in respect to the deceased's Estate, the Green Card in respect to the land parcel No. MWERUA/KAGIO/1012 (the suit land), and proceedings and judgment in **KERUGOYA SENIOR MAGISTRATE'S COURT CRIMINAL CASE No. 658 of 2009 REPUBLIC VS LUCY MUTHONI KIBOCHA Alias ANNA NYAWIRA KARUBIU**.

The gravamen of the application is that the deceased who was the step-father of the Applicant was at all material times the registered proprietor of the suit land where the Applicant, his siblings and their families have lived exclusively and un-interrupted. However, the Respondent fraudulently transferred the suit land into her names on 27th January 2009 some twenty eight (28) years after the deceased's death and had

the suit land registered in her names as per entries No. 2, 3 and 4 of the register of land. That when this fraud was discovered, the Respondent was charged vide **KERUGOYA SENIOR RESIDENT MAGISTRATE'S CRIMINAL CASE No. 658 of 2009** with, among other offences, obtaining registration by false pretences contrary to **Section 320 of the Penal Code**. She was convicted but before sentence could be passed, the Court was informed that she had died. It later transpired that she was infact alive and doing business at **KAGIO TOWNSHIP**. When the Police were informed, she disappeared.

The Applicant and his siblings who are now advanced in age therefore moved to this Court seeking the orders above.

The Respondent, though served through substituted service, did not enter appearance nor file any response to the Originating Summons which therefore proceeded ex-parte with the Applicant being the only witness.

I must confess that I found the manner in which the Applicant approached this Court to be rather unusual. Ordinarily, a party alleging fraud would file a plaint and, as required by **Order 2 Rule 10 of the Civil Procedure Act** particularize the allegations of fraud levelled against the defendant. However, **Section 80 (1) of the Land Registration Act** which the Applicant relies upon reads:

“Subject to Sub-section (2) the Court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake”.

The Applicant has also cited **Article 159 (2) (d) of the Constitution** and bearing in mind the fact that the Originating Summons is not opposed, I will consider it in that manner.

It is clear from the totality of what has been placed before me that the Respondent fraudulently registered herself as the proprietor of the suit land. Her conviction in **KERUGOYA SENIOR RESIDENT MAGISTRATE'S COURT CRIMINAL CASE No. 658 of 2009** was not appealed and is therefore conclusive proof of the fact that the Respondent is a fraudster and is admissible under **Section 47A of the Evidence Act**. Taken together with the fact that the Respondent did not bother to file any response to the Originating Summons and is infact on the run having feigned her death, it is clear that the Applicant is entitled to the orders sought in the Originating Summons dated 4th May 2016.

I accordingly allow the Originating Summons dated 4th May 2016 and make the following orders:

- 1. A declaration that L.R No. MWERUA/KAGIO/1012 was fraudulently transferred from the name of MORI NGANGA to the name of ANNA NYAWIRA KARUBIU.***
- 2. A declaration that entries No. 2, 3 and 4 in the register of L.R MWERUA/KAGIO/1012 were and are fraudulent, null and void.***
- 3. The Land Registrar to rectify the register of L.R MWERUA/KAGIO/1012 by cancellation of entries No. 2, 3 and 4 forthwith.***
- 4. No order as to costs.***

B.N. OLAO

JUDGE

1ST MARCH, 2018

Judgment dated, delivered and signed in open Court at Kerugoya this 1st day of March 2018

Mr. Abubakar for Applicant present

Respondent absent.

B.N. OLAO

JUDGE

1ST MARCH, 2018