



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 576 OF 2012

IN THE MATETR OF THE ESTATE OF MARGARET KEDOGO – DECEASED.

KENNEDY LIDALI OYANGI.....PETITIONER/ DEFENDANT

VERSUS

AGGREY ALUKHABA M MOSI...PROTESTOR/ PLAINTIFF

J U D G E M E N T.

1. The petitioner herein has filed a summons for confirmation of grant dated 17th August, 2017 seeking for confirmation of grant of letters of administration dated 26th February, 2014. The application was supported by the affidavit of the petitioner, Kennedy Lidali Oyangi who seeks for orders that land parcel No. **Kakamega/Mugomari/117** devolve to him.

2. The application was opposed by the protestor herein Aggrey Alukhaba Mmosi on the grounds that :

(1) The petitioner and the listed beneficiaries in the application for confirmation of grant are strangers and are not entitled to share the estate of the late Margaret Kedogo Oyangi, deceased.

(2) That the deceased Margaret kedogo Oyangi, secretly and fraudulently got registered herself on land parcel No. Kakamega /Mugomari/1174.

(3) That land parcel No. Kakamega/Mugomari/1174 belonged to the late Mmosi Luvaha who was the father to the protestor and owned the said parcel of land before the land adjudication process in Mugomari.

The protestor thereupon proposed that the said parcel of land be distributed to himself and his siblings as contained in his affidavit of protest dated 23rd October, 2017.

Background to the application

3. This succession cause relates to the estate of the late **Margaret Kedogo Oyangi**. At the time of her death she was the registered proprietor of the above stated parcel of land (herein referred to as the suitland). After her death the petitioner/defendant herein who is her son filed this succession cause. The petitioner thereupon applied for grant of letters of administration. An objection was then filed by Aggrey Alukhaba Mmosi on the grounds the deceased Margaret Kedogo had fraudulently acquired the registration of the suitland from the father of the objector, Mmosi Luvaha, during the land adjudication process. Later a grant of letters of administration was issued to the petitioner. He thereafter filed for summons for confirmation of grant where upon the objector filed a protest. Directions were taken that the matter proceeds by way of *viva voce* evidence with the protestor being deemed as the plaintiff and the petitioner the defendant. The matter then proceed to hearing. The plaintiff/protestor testified and called two witnesses. The defendant/petitioner testified and did not call any witness.

The Evidence for the plaintiff:-

4. The plaintiff testified was that he is a son to the late **Mmosi Luvaha**. That the suitland herein belonged to his late father. That after the death of his father, the family discovered that the land was registered in the name of the late Margaret Kedogo. That he did not know the said Margaret who hails from Vihiga County while the land is situate in Kakamega County. He does not have any blood relationship with her. His late father did not have any relationship with her. He does not know how the late Margaret got registered as the owner of the parcel of land. The witness urged the court to declare that the land belonged to his late father and that it should be inherited by him and his siblings.

5. **Josephat Ihachi Ingosi** PW2 testified that he is a resident of Ilesi sub- location in Kakamega County. That since the time he was born he has always known that the land in question belongs to the late Mmosi though he does not know the land parcel number. That he has never seen any other person on the said land. He does not know a deceased by the name Margaret. The plaintiff herein has no relationship with the said Margaret.

6. **Bandi Lunalo** PW3 told the court that he had known the late Mmosi since when he was young. That he knew that the land in issue belonged to him. He does not know a deceased called Margaret. The plaintiff herein has no relationship with the said Margaret.

Evidence for the Defendant.

7. The defendant stated in his evidence that he is a resident of Mbale. That he is the Assistant Chief of Mbale sub-location. That the deceased Margaret Kedogo was his mother. That the suitland herein is registered in the name of his late mother and belonged to her. He does not know the plaintiff/protestor in this succession cause and has no relationship with him.

In cross examination the witness stated that his mother was born at Mugomari on the said suitland. That she was living at Mugomari. He does not know where his grandfather was buried.

8. The defendant /petitioner urged the court to dismiss the protest and allow the summons for confirmation of grant as prayed.

Determination

9. There is no dispute in the case that the suitland herein is registered in the name of the late **MARGARET KEDOGO OYANGI** . The certificate of death that is annexed to the petition shows that Margaret died in the year 2002. A certificate of official search dated 4th October, 2011 that is annexed to the petition shows that Margaret Kedogo was issued with a the title deed to the suitland on the 7th August , 1978. The document shows that on the 14th May, 1979, a caution over the land was placed by one Mudi Keholo who was claiming beneficial interest to the land. Though there were no documents placed before the court to show when Mmosi Luvaha died, PW2 stated in his evidence that he died in the year 1979.

10. The plaintiff/ protestor contends that the land was fraudulently registered in the name of Margaret Kedogo during land registration. Before land is registered in the name of a person, there is a long process of adjudication and demarcation before registration is eventually effected. There was no evidence that there was any dispute between the plaintiff's father and Margaret during the process of land adjudication. The plaintiff's father did not challenge the registration of the land in the name of the deceased. It is most unlikely that he did not know during the adjudication process that Margaret Kedogo was the claimant to the land. Why is the protestor then challenging the ownership of the land now?

11. Fraud is a criminal offence. There is no evidence that the plaintiff/objector has ever reported the alleged fraud to the police for investigations to be conducted. Neither is there evidence that the protestor has ever sued the estate of Margaret to recover the land. It is worthy to note that the land was registered in the name of Margaret in 1978. She died in the year 2002. If the protestor/plaintiff discovered after the death of his father who died in 1979 that the land was registered in the name of Margaret, it is telling that he did not sue Margaret for a period of 23 years before she died in the year 2002.

12. One person by name Mudi Keholo entered a caution over the registration of the land in the name of Margaret in year 1979. It is unbelievable that the plaintiff/protestor did not know that it is Margaret Kedogo who had been registered as the proprietor of the land.

13. Section 26(1) of the Land Registration Act 2012 states that :-

The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon registration or by transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except -

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party, or

(b) Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

There is no fraud proved in this case. Land parcel Kakamega/Mugomari/1174 lawfully belongs to the estate of the late Margaret Kedogo Oyangi. The affidavit of protest dated 23rd October, 2017 by the protestor/ plaintiff has no merits. The same is accordingly dismissed with costs to the petitioner/defendant.

14. In the premises, the summons for confirmation of grant dated 17th August, 2017 are granted and the suitland **Kakamega/Mugomari/1174** is to devolve to Kennedy Lidali Oyangi.

Delivered, Dated and signed at Kakamega this 11th day of July, 2018

J. NJAGI

JUDGE

In the presence of :

Mango.....for petitioner/defendant

N/A.....for protestor/plaintiff

George/Ruto.....Court Assistant

Protestor.....present