



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 126 OF 2015

DORINE MURONJI MUGANDA.....PLAINTIFF

VERSUS

EDWARD OMWALO HALWENGE

NANCY WANJIRU GITAU.....DEFENDANTS

JUDGEMENT

By a plaint dated 22nd April 2015, the plaintiff avers that she needed money and wanted to borrow money from her friend Mellisa Osanya. That Mellisa Osanya advised the plaintiff to go and get the money from a person she knew who could lend money on security. That Mellisa offered to introduce the plaintiff to the 1st defendant who was to lend her money. The plaintiff informed the 1st defendant that she wanted Kenya Shillings Twenty thousand only (Ksh. 20,000/=) and that she was to offer land parcel number BUTSOTSO/SHIKOTI/12940 as security for the advance. The 1st defendant accepted to lend the money but wanted some more time to verify the ownership of the title. He told the plaintiff to go away as soon as the verification is over he will ring her. The 1st defendant later rang the plaintiff and sent her Kenya Kshs Ten Thousand Only (Kshs. 10,000/= through M-Pesa and later paid cash of Ksh. 10,000/= which was given to her son. The plaintiff avers that she was to refund the money back after one month with interested thereof of 10%. The plaintiff avers that when she got the money and wanted to refund the same, the 1st defendant refused to get the money back. The plaintiff avers that during the month of March, she visited her land parcel number BUTSOTSO/SHIKOTI/12940 and found somebody erecting toilet thereon. Thereafter the 1st defendant came and claimed that he had bought land from the plaintiff and provided a copy of an agreement with a copy of a title in the names of the 1st defendant and 2nd defendant. The plaintiff avers that she has never sold land to the defendants herein and that the title the defendants have is a result of fraud and that the defendants committed fraud. The plaintiff avers that the defendant has purported to occupy land parcel number BUTSOTSO/SHIKOTI/12940. The plaintiff seeks an eviction order against the defendants. The plaintiff also prays that the title given to the defendants on 23rd December, 2014 be cancelled and the plaintiff be reinstated as the owner of land parcel number BUTSOTSO/SHIKOTI/12940. The plaintiff prays for:-

- (a) That the court orders for the cancellation of title issued to the defendants on 23rd December, 2014 for land parcel number BUTSOTSO/Shikoti/12940.
- (b) The court orders for the cancellation of the defendant's registration as owners of land parcel number Butsotso/Shikoti/12940 done on 23rd December, 2014.
- (c) An eviction order to evict the defendants, their servants, employees, personal representatives and or assignees from land parcel number Butsotso/Shikoti/12940.
- (d) Costs of the suit.
- (e) Any other order deemed fit and just.

PW2 the said Mellisa testified how she lent the plaintiff some money and she was paid back. PW3 the plaintiff's husband testified that, he was not aware that his wife had sold the property. It is his evidence that he offered to refund the money under duress. He insists that the signature in the sale agreement was not that of his wife.

The 1st defendant in his testimony stated that the plaintiff willfully sold her land parcel No. Butsotso/Shikoti/12940 for a purchase price of Ksh. 550,000/= which the purchase price the 1st defendant paid in full and final settlement in installments of Ksh. 500,000/=, 30,000/=, 10,000/= and a further 10,000/= to the plaintiff's son on the plaintiffs' instructions and the plaintiff willfully surrendered her original title deed, passport size photos and personal identification number (PIN) card for purposes of transferring title to the defendants not forgetting that the plaintiff willfully signed the relevant land transfer documents. The 1st defendant denies that he is a money lender as the plaintiff

pains him and that these was never money lending transaction between the plaintiff and the 1st defendants and the plaintiff is put to strict proof to the contrary. The defendants aver that the plaintiff willfully signed a sale agreement before the area assistant chief and surrendered vacant possession of the land in dispute.

DW2 the Chief at the material time confirms she drew up the sale agreement and both the parties signed in her presence. The plaintiff is her relative and she confirms the terms of the agreement. DW3, and Assistant County Officer was sitting at the Land Control Board on the 14th November 2014 when the suit land was discussed and consent given. He produced the minutes, application for consent and consent as DEx. 8, 1 and 2. The plaintiff appeared before the Board. DW4 the investigating officer confirms that he took specimen signature from the plaintiff and it was established that she had signed the documents. DW5 the document examiner confirmed that the sale agreements were that of the plaintiff.

This court has carefully considered the evidence and submissions therein. The Land Registration Act is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides as follows:

“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

Section 26 (1) of the Land Registration Act states as follows:

“The Certificate of Title issued by the Registrar upon registration ... 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... 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.”

The law is clear that, the Certificate of Title issued by the Registrar upon registration 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 and the title of that proprietor shall not be subject to challenge except – On the ground of fraud or misrepresentation to which the person is proved to be a party; or Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

This court in considering this matter referred to the case of Elijah Makeri Nyangw'ra –vs- Stephen Mungai Njuguna & Another (2013) eKLR where the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. Hon. Justice Munyao Sila in the case while considering the application of section 26(1) (a) and (b) of the Land Registration Act rendered himself as follows:-

“-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.”

It is not in dispute that the defendants are the registered owners of the suit land. 1st defendant in his testimony stated that the plaintiff willfully sold her land parcel No. Butso/ Shikoti/12940 for a purchase price of Ksh. 550,000/= which the purchase price the 1st defendant paid in full and final settlement in installments of Ksh. 500,000/=, 30,000/=, 10,000/= and a further 10,000/= to the plaintiff's son on the plaintiffs' instructions and the plaintiff willfully surrendered her original title deed, passport size photos and personal identification number (PIN) card for purposes of transferring title to the defendants not forgetting that the plaintiff willfully signed the relevant land transfer documents. DW2 and DW3 corroborated his evidence. The plaintiff denies selling the suit land and states she never signed any documents. She gave the title as security for a loan. DW5 the document examiner confirms that the plaintiff signed the sale agreement. Both the plaintiff and PW3 her husband confirm that she did receive Kshs. 550,000/= and PW3 offered to refund. I find the plaintiff and her witnesses are dishonest people who are trying to mislead the court and I will not allow them. I find that the plaintiff willingly sold her parcel of land to the defendants, received the purchase price and now thinks she can turn around and disown the process. She signed all the transfer documents and the land was legally transferred to the defendants. I see no evidence of fraud in the process. I find that the plaintiff has failed to establish her case on a balance of probabilities and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 21ST DAY of NOVEMBER 2018.

N.A. MATHEKA

JUDGE