

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 33 OF 2017

WINLORD MUHEMBERI.....PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF VIHIGA.....DEFENDANT

JUDGEMENT

The plaintiff avers that he and his brother Eliud Engavo Embwaga are the biological sons and legal heir of the late Andrew Munubi. The plaintiff also avers that they are administrators and beneficiaries of the estate of their late father vide High Court Succession Cause No. 889 of 2013 at Kakamega. The plaintiff further states that their late father was the lawful owner of plot No. 71 Mbale which forms part of their late father's estate hence they succeeded it through in the succession cause above herein. It is the plaintiff's averment that through the succession cause of their late father plot No. 71 Mbale devolved to him and his brother Eliud Engavo Embwaga jointly vide a certificate of confirmation of grant issued therein. At all material time herein referred the plaintiff has been in compliance of payment to the defendant herein the rates of plot No. 71 Mbale and payment is up to date. The plaintiff avers that they do not reside on the said plot and due to working out of Mbale the defendant has used this as an advantage to unlawfully without any justifiable cause and color of right to close and subdivide plot No. 71 resulting to new numbers 69, 78A and 78B registered in the names of other people unknown to the plaintiff without the plaintiff's permission and/or consent. The plaintiff avers that due to these inefficiencies they are unable to enjoy the fruits of the concluded succession cause of their late father as the grant and certificate of confirmation of grant have not been registered at the defendant's instance. The plaintiff's claim as against the defendant is for a declaration that the aforesaid transaction is null and void and the defendant be ordered to nullify the transfers closure and subdivisions effected on plot No. 71 Mbale as the same rightfully belong to the plaintiff herein and his brother. The plaintiff prays that judgment be entered in favour of the plaintiff as against the defendant for:-

- a. A declaration that the aforesaid transaction is null and void and the defendant be ordered to nullify the transfers closure and subdivisions effected on plot No. 71 Mbale and the defendant be ordered to remove to register the Grant and Certificate of Confirmation issued by this honourable court on the suit parcel of land.
- b. That the transfer and registration against the parcel of land known as plot No. 71 Mbale in favour of other people be nullified forthwith.
- c. Costs of this suit.
- d. Any other relief this honourable court may deem just to grant.

The defendant avers that any transactions and/or dealings (if any), relating to the subject property are procedural, regular and lawful. The defendant further avers that neither has it unlawfully dealt with nor illegally sub-divided the suit property. The defendant avers that the plaintiff's suit is defective, irregular and/or poorly pleaded and calls for further and better particulars from the plaintiff. The defendant further avers that the orders and/or declarations sought by the plaintiff are unlawfully, illegal and defective and seeks to have this suit dismissed on these grounds.

This court has considered the evidence and submissions therein. The plaintiff testified that their late father was the lawful owner of plot No. 71 Mbale which forms part of their late father's estate hence succeeded in the succession cause above herein. It is the plaintiff's testimony that through the succession cause of their late father plot No. 71 Mbale devolved to him and his brother Eliud Engavo Embwaga jointly vide a certificate of confirmation of grant issued therein. At all material time herein referred the plaintiff has been in compliance of payment to the defendant herein the rates of plot No. 71 Mbale and payment is up to date. The plaintiff avers that they do not reside on the said plot and due to working out of Mbale the defendant has used this as an advantage to unlawfully without any justifiable cause and color of right to close and subdivide plot No. 71 resulting to new numbers 69, 78A and 78B registered in the names of other people unknown to the plaintiff without the plaintiff's permission and/or consent. I have perused the documents adduced as evidence. The demand note for plot 71 and receipts of payment by the plaintiff's father are dated 2016. The survey of lease plot 71 letter to Peninah Endeheri is dated 2002, this means that by 2016 this plot was not available and had been allocated to someone else. The plaintiff has not produced any proof that it was allocated to his father prior to that or at all. Secondly there is no proof on record that the same has been subdivided to produce other plots. I find that the plaintiff has failed to prove ownership of the said plot and existence of the same on a balance of probabilities and the case is dismissed with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 24TH DAY OF JUNE 2020.

N.A. MATHEKA

JUDGE