



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 21 OF 2017

ESTHER NELIMA MANYASI.....PLAINTIFF

VERSUS

1. SIMEA JAMIN ALFRED

2. ANUNDA DAVID

3. ALEMBE KHATERE

4. JAMES WAFULA

5. ANTHONY MANASSEH

6. ALFRED WAFLA MUSOMBI

7. PETER BARAZA

8. MARY OREDI.....DEFENDANTS

JUDGEMENT

The plaintiff avers that at all material times prior to this suit, the plaintiff and the following people namely; Zebedee China Manyasi, Ann Namakavuli Manyasi, Emily Nyongesa Kisindayi and Betty Makonjo Manyasi who are brother and sisters to the plaintiff respectively were and are registered owner of Land Parcel No. Kabras/Kivywa/688 whose interests are represented by the plaintiff herein. The plaintiff avers that sometimes back in the year 2015 when she visited the land in question, she found that the defendants who are strangers to the plaintiff and her siblings had trespassed and put some structures on the land parcel No. N. Kabras/Kivywa/688 without any colour of right. It is the plaintiff's claim that the defendants, their nominee, agents and any other person who may claim under them should be evicted and their houses demolished and permanent injunction be issued restraining them from entering and/or remaining on the land parcel No. N. Kabras/Kivywa/688.

The defendant deny that their entry was without lawful justification and state that before entering and possessing the land parcel No. North Kabras/Kivywa/688 the defendants purchased the land and fully settled the agreed purchase consideration individually. The plaintiff is fully aware that the defendants are beneficiaries of the estate of the late Hezron Manyasi but secretly decided to file Nairobi Succession Cause No. 2858 of 2014 without involving the defendants and has not come to equity with clean hands. Plaintiff has failed to sub-divide the land parcel No. North Kabras/Kivywa/688 and transfer relevant parcels to the defendants. The defendants counter claim for judgment against the plaintiff:-

(a) To subdivide the transfer relevant land parcel to each defendant according to the size purchased.

(b) Costs of this counter claim.

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) eCLR 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. The Judge 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 a finding of fact the plaintiff jointly with Zebedee China Manyasi, Ann Namakavuli Manyasi, Emily Nyongesa Kisindayi and Betty Makonjo Manyasi who are brother and sisters to the plaintiff are registered owners of Land Parcel No. Kabras/Kivywa/688 (PEX 4 is the title deed). Prior to the hearing of the case the plaintiff withdrew the cases against the 1st, 6th and 7th defendants leaving the 2nd 3rd 4th 5th and 8th defendants. PW1 testified that the land belonged to their parents and after succession proceedings they jointly inherited the same. The plaintiff produced the gazette notice, grant of letters of administration, the certificate of confirmation of grant, copy of the title deed and copy of the search as exhibits.

DW1 the 2nd defendant David Anunda testified that he bought the suit land in 2004 and stayed there for 3 years and then got a demand letter. He cannot remember the person who sold the land to him. DW2 the 3rd defendant Alembe Khatere testified that he also bought the portion of the suit land from Kisindai Manyasi but never got the title. He did not produce any sale agreement. DW3 the 4th Defendant James Wafula stated he bought the portion he lives on from Kisindai and produced a sale agreement. DW4 confirms she was the clerk during the sale agreement and that one Sarah sold the land to David. The 8th defendant failed to attend court. All the defendants never produced any evidence from the seller. They also never produced the search to prove that the seller had the capacity to sell to them portions of the suit land. Indeed the DW1 could not remember who sold the land to him. I find that the defendants unlawfully entered and occupied the suit land and are trespassers. I find that the plaintiffs title jointly with her siblings is indefeasible and has not been challenged. I find that the plaintiff has proved her case on a balance of probabilities and I grant the following orders;

1. The 2nd 3rd 4th 5th and 8th defendants, their nominee, agents and any other person who may claim under them vacate the suit land parcel No. N. Kabras/Kivywa/688 within the next 90 (ninety) days from the date of this judgement and in default eviction order to issue forthwith.
2. Thereafter a permanent injunction be issued restraining them from entering and/or remaining on the land parcel No. N. Kabras/Kivywa/688.
3. Each party to bear its own costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 23RD DAY OF JUNE 2020.

N.A. MATHEKA

JUDGE