



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO.175 OF 2014

1. AGNES WUGANGA E. JABU

2. DEBORA BABY BUKI (*suing on behalf of the estate of*

***the late CHARLES BUKI MOSES*.....PLAINTIFFS**

=VERSUS=

1. PETER KIVOLONZI

2. FATUMA BUKI MOSES

3. JANE NGALE FUKWE

4. THE LAND REGISTRAR,

KILIFI.....DEFENDANTS

J U D G M E N T

Introduction:

1. This suit was commenced by way of a Complaint dated 23rd September 2014.

2. In the Complaint, the Plaintiffs averred that the late Charles Buki was the registered owner of plot number Kilifi/Kijipwa/202; that in the year 2010, the 2nd and 3rd Defendants applied for letters of administration as the administratrix of the Estate Charles Buki Moses and that the 2nd and 3rd Defendants failed to involve the beneficiaries of the Estate of Mr. Buki in the Succession proceedings.

3. It is the Plaintiffs' averment that on 30th September 2011, the 2nd and 3rd Defendants purported to sell the suit property to the 1st Defendant without the consent of the other beneficiaries and that vide a Transfer dated 31st January, 2012, the late Charles Buki Moses is purported to have signed the Transfer in favour of the 1st Defendant.

4. The Plaintiffs have instituted the suit on behalf of the Estate of Mr. Buki in which they are seeking for the rectification of the register by cancelling the 1st Defendant's name as proprietor of parcel of land

number Kilifi/Kijipwa/202.

5. The Defendants were served with Summons to Enter Appearance and the Plaint by way of advertisement in the Standard Newspaper of 24th October 2014.

6. The Defendants neither entered appearance nor filed their Defences within the requisite period. The matter proceeded for formal proof on 4th May, 2015.

The Plaintiffs' case:

7. The 1st Plaintiff, PW1, informed the court that she is the wife of the late Charles Buki Moses who passed away on 8th July, 2010. It was her evidence that the late Mr. Buki had three wives. Two of the wives have since passed on although their children are still alive.

8. PW1 informed the court that she used to live on the suit property with her late husband and children which was allocated to him. By the time her husband died, it was the evidence of PW1 that he had not been issued with a title deed.

9. PW1 informed the court that in the year 2007, her, together with her children vacated the suit land. However, when she went to check on the land later on, she found the same had been fenced off.

10. On conducting a search at the land registry, PW1 found that the suit property had been transferred and registered in favour of the 1st Defendant.

11. It was the evidence of PW1 that the agreement in respect of the suit property shows that the same was sold by the 2nd and 3rd Defendants while the Transfer was signed by the late Buki.

12. It was the evidence of PW1 that the 2nd and 3rd Defendants, who are children of the late Buki never involved her, together with the other family members, in the sale of the suit property to the 1st Defendant and that the said sale is null and void.

13. The Plaintiff's advocate did not submit. The advocate relied on the evidence and the exhibits on record.

Analysis and findings:

14. The 1st Plaintiff, PW1, produced in evidence the copy of a letter dated 26th November 1997 from the District Land Adjudication and Settlement Office, Kilifi, showing that the late Charles Buki was allocated the suit property by the Settlement Fund Trustee.

15. PW1 also produced the copy of the green card which showed that the suit property was registered in favour of the late Buki on 26th March 2008 after his death.

16. It was the evidence of PW1 that although Mr. Buki died on 8th June, 2000, he was registered as the proprietor of the suit property post humously, the land having been allocated to him by the Settlement Fund Trustee.

17. However, when the 1st Plaintiff checked the status of the land at the land registry in Kilifi, she was given a transfer document showing that Mr. Charles Buki Moses (Deceased) had signed the Transfer document on 31st January, 2012 transferring the suit property to the 1st Defendant at a consideration of Kshs.4,000,000/-.

18. The said Transfer was duly registered by the 4th Defendant on 10th February 2012 and a title deed was

issued on the same day to the 1st Defendant.

19. The copy of the agreement that was produced by PW1 shows that the suit property was sold by the 2nd and 3rd Defendants to the 1st Defendant for Kshs.13,500,000 although they are not the ones who signed the Transfer document.

20. PW1 produced the copy of the Certificate of Death which shows that the late Charles Buki Moses died on 8th June 2000. He could not therefore have resurrected to sign the Transfer document on 16th February 2012 in respect of the suit property.

21. Pursuant to the provisions of Section 82(a)(i), of the Law of Scuccession Act, immovable property can only be sold after the confirmation of grant. PW1 produced a copy of the Certificate of Confirmation of a grant dated 1st April 2014 showing that the Plaintiffs are the legal representatives of the late Charles Buki Moses.

22. The Certificate of Confirmation of Grant also shows that the suit property is in the name of the Plaintiffs.

23. It is therefore clear that the 2nd and 3rd Defendants fraudulently sold the suit property to the 1st Defendant because they did not have the legal authority to do so.

24. It is also clear that the Transfer document that was presented for registration of the suit property in favour of the 1st Defendant was null and void because by the time it was purportedly signed by Mr. Buki, Mr. Buki was already dead.

25. Section 80(1) of the Land Registration Act grants to this court powers to order for the rectification of the register by directing that any registration be cancelled if the court is satisfied that the registration was obtained, made or omitted by fraud or mistake.

26. In view of the evidence before me, I am satisfied that the registration of the suit property in favour of the 1st Defendant was obtained by fraud.

27. For those reasons, I allow the Plaintiffs' Plaint dated 23rd September 2014 as follows:

(a) A declaration be and is hereby issued that Charles Buki Moses is the proprietor of parcel of land known as Kilifi/Kijipwa/202.

(b) An order be and is hereby issued directing the 4th Defendant to rectify the Register by canceling the 1st Defendant's name as proprietor of land known as Kilifi/Kijipwa/202.

(c) A permanent injunction be and is hereby issued restraining the Defendants or any of them either by their servants, agents, or employees from presenting or registering any instrument or document against title number Kilifi/Kijipwa/202.

(d) The 1st, 2nd, and 3rd Defendants to pay to the Plaintiffs the costs of the suit.

Dated and delivered in Malindi this 5th day of June, 2015.

O. A. Angote

Judge