



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 115 OF 2005

JACOB WAPUKHULU WEKESA PLAINTIFF

VERSUS

NANCY WANJERI KAMAU.....DEFENDANT

J U D G M E N T

INTRODUCTION

1. The plaintiff is the registered owner of **L.R. No. Kitale Municipality Block 15/Koitogos/1963** (suit land). The suit land is a subdivision of **L.R. No. Kitale Municipality Block 15/Koitogos/744** which was registered in the name of **Kimani Nelson Mwangi** the late husband of the defendant. Nelson Kimani Mwangi (deceased) died on **4/12/2001**. The plaintiff brought this suit against the defendant seeking eviction orders against her on the ground that she is a trespasser on the suit land.

PLAINTIFF'S CASE

2. The plaintiff testified that he bought the suit land on **4/5/2005** from one **Samson Waliaula** who was selling it on behalf of **Joyce Shimuli Lwembuli** who was the registered owner. He produced a copy of the sale agreement exhibit 2 and a copy of title deed exhibit 1. He has however never taken possession because the defendant claims that the suit land belongs to her. His efforts to ask the defendant to move out of the suit land have been in vain as the defendant has refused to vacate the suit land. He testified that there was a caution lodged against the main title deed but that it was removed later on paving way for his registration.

DEFENDANT'S CASE

3. The defendant testified that she is the wife of the deceased who died on **4/12/2001**. The deceased was the registered owner of **L.R.No. Kitale/Municipality Block 15/Koitogos/744** as per the extract of title produced as defence exhibit 1. She also produced a copy of Certificate of Death to confirm that the deceased died on **4/12/2001** (defence exhibit 2). She later took out Letters of Administration jointly with one **Absolom Irungu Kimani**. The Grant of Letters of Administration was later confirmed as per the Certificate of Confirmation produced as defence exhibit 3.

4. The defendant further testified that the deceased's land was illegally sub- divided resulting in the suit land. As at the time the sub-division and registration was done, she had not obtained Letters of

Administration in respect of the estate of the deceased. When she realized that the deceased's land was in the process of being subdivided, she caused a restriction to be registered against the title. She contends that there is no way the deceased's land would have been sub-divided after the deceased's death without involvement of the administrators of the deceased's estate. She contends that the subdivision and subsequent registration of part of the deceased's land to Joyce Shimuli Lwembuli was fraudulent.

ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION

5. There is no contention that the suit land is a subdivision of **L.R. No. Kitale Municipality Block 15/Koitogos/744** which was registered in the name of the deceased. There is also no contention that the deceased died on 4/12/2001. The issues which arise for determination are firstly whether the subdivision and registration of the suit land in the names of Joyce Shimuli Lwembuli was lawful or not. Secondly whether the said Joyce Shimuli Lwembuli had good title to pass to the plaintiff.

6. According to the extract of title produced by the defendant, Joyce Shimuli Lwembuli was registered as owner of the suit land on **22/12/2004**. This was over three years since the deceased died. It is not known how the said Joyce Shimuli Lwembuli managed to have the deceased's land subdivided and a portion thereof registered in her name. Property of a deceased person cannot be disposed legally unless through the administrators of the deceased upon confirmation of Grant of Letters of Administration. In this case the Grant of Letters of Administration of the estate of the deceased was confirmed on **8th March, 2007**. Joyce Shimuli Lwembuli was registered as owner of the suit land on **22/12/2004** three years before the grant was confirmed. It is therefore clear that the registration of the suit land in her name was not done in a proper manner. It was illegally obtained.

7. The plaintiff bought the suit land from one Samson Waliaula who was purportedly doing so on behalf of Joyce Shimuli Lwembuli. The said Samson Waliaula claimed that he had a power of attorney from Joyce Shimuli Lwembuli. The plaintiff admitted during cross-examination that he was not shown the alleged power of attorney. He also conceded that he was never taken before the Land Control Board for consent but he somehow managed to have the suit land transferred into his name. There was no evidence as to who signed the transfer forms to enable him have the suit land registered in his name.

8. Though the plaintiff was not bound to inquire into how the vendor was something wrong in the title. First, he never saw the said registered owner. He dealt with Samson Waliaula who alleged that he had the power of attorney. He was not shown the said power of attorney. Secondly he conceded that he was not taken before the Land Control Board for consent. The plaintiff had been confronted with allegations of fraud. At least he should have brought evidence to show that he was an innocent purchaser for value without notice. The plaintiff appears to have been aware that there was something wrong in what he was buying but still went ahead to buy the same. There was a restriction registered on the title. The plaintiff was aware of the same but he somehow went round it and had himself registered as owner of the suit land. The plaintiff claimed in his evidence that there was a restriction registered on the land but it was removed. The restriction was expressed to be in force until the dispute which was there regarding the land was resolved. There is no evidence that the dispute was resolved or that the restriction was removed. It is clear therefore that the plaintiff was part of the fraudulent scheme to have the land registered in his name. He cannot be said to be an innocent purchaser for value without notice.

DECISION

9. It is clear that the deceased's land was unlawfully and fraudulently subdivided. The defendant cannot be evicted from what lawfully belongs to her and I therefore find that the plaintiff has not established a case against the defendant. The suit herein is dismissed with costs to the defendant.

Dated, signed and delivered at Kitale on this **9th** day of **June, 2015**.

E. OBAGA

JUDGE

In the presence of M/s. Arunga for plaintiff and Mr. Onyancha for defendant.

Court clerk – Isabellah.

E. OBAGA

JUDGE

9/6/2015