



IN THE COURT OF APPEAL

AT KISUMU

(Coram: Nyarangi, Gachuhi & Apaloo JJA)

CIVIL APPEAL NO 39 OF 1986

BETWEEN

MUGOGO.....APPELLANT

AND

SIHOWA.....RESPONDENT

(Appeal from the judgment of the High Court at Kisumu, Butler-Sloss J)

JUDGMENT

January 19, 1988, **Nyarangi, Gachuhi & Apaloo JJA** delivered the following Judgment.

Before dealing with the important points of law raised in this appeal, it is necessary to set out the relevant facts which are established by the pleadings and by the evidence.

The disputed land was demarcated and adjudicated upon in the year 1963.

Neither the appellant nor the respondent was at home then. As provided under section 26(1) of the Land Adjudication Act (Cap 284) all persons named in or affected by the register were allowed sixty days from the date of the publication of the adjudication register to object to the adjudication officer in writing saying in what respect the register was wrong or incomplete. No evidence was adduced to show that any objection was made in respect of the material parcel of land. It is notoriously difficult for there to be no objection after the publication of a register if there are errors. The exercise of land adjudication involves government officials and a panel of local elders who are knowledgeable about the area concerned and also as to the ownership and occupation of the land the subject-matter of adjudication.

What happened thereafter was that on February 17, 1970 the respondent was registered as the absolute proprietor of the parcel of land title number Uholo/Tungare 799.

Then comes the problem. On November 16, 1984 the appellant filed this action alleging that the first registration was fraudulent. The appellant was asked why he waited from the time of adjudication to the year 1984 to complain. To that question the appellant was to our mind unable to provide any satisfactory answer.

Section 143(1) of the Registered Land Act provides,

“(1) Subject to subsection (2), the court may order rectification of the register by directing that any

registration be cancelled or amended where it is satisfied that any registration (other than a first registration) has been obtained, made or omitted by fraud or mistake.”

Here there is no evidence of fraud or mistake. Even if fraud had been established, inasmuch as the respondent’s title was acquired by first registration, it can, in no circumstances, be defeated. So it comes to this, that the relevant provision in the Land Adjudication Act and in the Registration Land Act favour the respondent’s case.

For this reason, the appeal must be and is dismissed with costs.

That is the order of the court.

Dated and delivered at Kisumu this 19th day of January, 1988

J.O NYARANGI

.....

JUDGE OF APPEAL

J.M GACHUHI

.....

JUDGE OF APPEAL

F.K APALOO

.....

JUDGE OF APPEAL