



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 45 OF 2014

DANIEL IFEDHA ANYAMBU.....PLAINTIFF

VERSUS

MESHACK KHONYI ONGAYE.....1ST DEFENDANT

SHEM ANYAMBU.....2ND DEFENDANT

JUDGEMENT

In this case, the plaintiff avers that he is the son Samwel Anyambu who was the registered owner of L.P. NO. KAKAMEGA/SHAMAKHOKHO/260 before registering the said parcel of land in the names SHEM ANYAMBU who was the title deed holder of the above mentioned parcel of land. The plaintiff avers that the 2nd defendant has secretly disposed the whole parcel of L.P.NO. KAKAMEGA/SHAMAKHOKHO/260 to a certain purchaser without the plaintiff's knowledge nor consent. The plaintiff avers that the area Assistant through the village served him with a letter for trespass to land parcel No.KAKAMEGA/SHAMAKHOKHO/260 which the 1st defendant who is a stranger to him claims to be his and informed the plaintiff that he was supposed to demolish all the structures in the parcel of land and vacate the said parcel of land. There have been a case filed in this honourable court pertaining the said parcel of land whereby judgment was passed that the 2nd defendant should surrender the said parcel of land and stop disposing it off to any other person since he is not a party but the 2nd defendant has declined to honour the same. The plaintiff prays for judgment against the defendants for:-

1. An order for a permanent injunction restraining the defendants, their agents' servants, employees and or anybody acting on behalf from interfering, encroaching, alienating, cultivating, contracting, constructing and or dealing in any manner on L.P.NO. KAKAMEGA/SHAMAKHOKHO/260.
2. Costs and interest at court rates.

PW2 and PW3 testified that the land belonged to their brother and that the plaintiff was his nephew. PW3 never witnessed any subdivision before his brother died.

DW1, the 1st defendant testified that he was an innocent purchaser for value. DW2, the 2nd defendant avers that he was the absolute registered owner of the suit land and he did not require the consent of the plaintiff while selling the same to the 1st defendant and the transactions of sale was not secret but openly and the due process was followed. The defendant avers that there having been previous proceedings between the plaintiff and the 2nd defendant, the suit herein is an abuse of court process and res judicata and ought to be struck out with costs.

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) eKLR 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. Hon Justice Munyao Sila 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 not in dispute that the registered owner of L.P. NO. KAKAMEGA/SHAMAKHOKHO/260 is the 2nd defendant Koi Meshack Ongaye. The 1st defendant produced the title deed DEx1. DEx3 which was the ruling in the Judicial Review application No 11 of 2010 confirmed that the 2nd defendant was the first registered proprietor of the suit parcel of land and quashed and decision of the tribunal. The plaintiff lived and occupied L.P. NO. KAKAMEGA/SHAMAKHOKHO/259 registered in the name of Shalimba Deina Anyambu his mother. I find no evidence that the title is obtained by fraud or misrepresentation to which the defendants were a party. Secondly I find no evidence that the certificate of title has been acquired through a corrupt scheme. I find the defence reasonable and I accept it. I find that the plaintiff has failed to prove his case on a balance of probabilities and I dismiss his case with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 26TH DAY OF FEBRUARY 2019.

N.A. MATHEKA

JUDGE