



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 264 OF 2015

SAMWEL BULIMO BABU.....PLAINTIFF

VERSUS

JARED CHECK ELEYO.....DEFENDANT

JUDGEMENT

By a plaint dated 24th August 2015, the plaintiff stated that, he is the administrator of the estate of Sophia Asami Madangi, deceased, who died intestate on the 3rd day of May, 2010 and on the 16th day of October, 2012 Limited Letters of Administration Ad litem of the said estate was duly granted to the plaintiff on such administrator from the Kakamega District Registry of the family division of the High Court of Kenya. By certificate of confirmation of grant in Kakamega HC Succession Cause No. 381 of 1995, dated the 30th day of September, 1997, the said Sophia Asami Madangi – deceased became entitled as beneficiary, to be registered as proprietor of land title No. Kakamega/Sango/287. On the 13th day of June, 2007 or thereabout, the defendant without the consent of the deceased secretly and wrongly caused the said land title No. Kakamega/Sango/287 to be sub-divided into six (6) parcels and transferred to himself.

Particulars of the new sub-divisions of Kakamega/Sango/287.

- (a) Kakamega/Sango/1928.
- (b) Kakamega/Sango/1929
- (c) Kakamega/Sango/1930
- (d) Kakamega/Sango/1931
- (e) Kakamega/Sango/1932
- (f) Kakamega/Sango/1933.

The plaintiff's claim against the defendant is for:-

1. A declaration that the defendant holds land title numbers Kakamega/Sango/1928; 1929; 1930; 1931; 1932 and 1933; original Kakamega/Sango/287 in trust for the estate of Sophia Asami Madangi – deceased.
2. An order that the defendant do transfer the said land parcels numbers Kakamega/Sango/1928; 1929; 1930; 1931; 1932 and 1933 to the Estate of Sophia Asami Madangi – deceased.
3. Costs of the suit.

PW1, produced the Limited Letters of Administration Ad litem of the said estate was duly granted to the plaintiff on such administrator from the Kakamega District Registry of the family division of the High Court of Kenya dated the 16th day of October, 2012 (PEx4). He testified that, by certificate of confirmation of grant in Kakamega HC Succession Cause No. 381 of 1995, dated the 30th day of September, 1997, the said Sophia Asami Madangi – deceased became entitled as beneficiary, to be registered as proprietor of land title No. Kakamega/Sango/287(PEx1 and 2). On the 13th day of June, 2007 or thereabout, the defendant without the consent of the deceased secretly and wrongly caused the said land title No. Kakamega/Sango/287 to be sub-divided into six (6) parcels and transferred to himself (PEX 5 a to f are the search certificates). The defendant was served but failed to attend court or offer any defence.

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 a finding of fact the suit land parcel No. Kakamega/Sango/287 was subdivided six times and registered in the name of the defendant. The issue for determination is whether or not the certificate of title has been acquired through a corrupt scheme. PW1 has produced a certificate of confirmation of grant in Kakamega HC Succession Cause No. 381 of 1995, dated the 30th day of September, 1997, the said Sophia Asami Madangi – deceased became entitled as beneficiary, to be registered as proprietor of land title No. Kakamega/Sango/287. The defendant has offered no evidence. I find that the plaintiff has established that the titles acquired by the defendant were obtained by fraud and or misrepresentation. I find that the plaintiff has proved his case on a balance of probabilities and I grant the following orders;

1. A declaration that the defendant holds land title numbers KAKAMEGA/SANGO/1928; 1929; 1930; 1931; 1932 and 1933; original Kakamega/Sango/287 in trust for the Estate of Sophia Asami Madangi – deceased.
2. An order that the defendant do transfer the said land parcels numbers Kakamega/Sango/1928; Kakamega/Sango/1929; Kakamega/Sango/1930; Kakamega/Sango/1931; Kakamega/Sango/1932; Kakamega/Sango/1933; to the Estate of Sophia Asami Madangi – deceased.
3. Costs of the suit to the plaintiff.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 19TH DAY OF MARCH 2019.

N.A. MATHEKA

JUDGE