



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC CASE NO. 13 OF 2017

ATHANASIOUS GITARI HERMAN.....1ST PLAINTIFF

PETER MURAGE.....2ND PLAINTIFF

VERSUS

ALICE WANGUI HUNYU.....1ST DEFENDANT

THE DISTRICT LAND REGISTRAR, NYERI.....2ND DEFENDANT

JUDGMENT

1. The plaintiffs herein who claim to be the administrators of the estate of Boniface Murage Nguyo (hereinafter referred to as the deceased person) brought this suit *inter alia* seeking cancellation of the title deed issued to the 1st

defendant in respect of the parcel of land known as LR No. **Mweiga Block 1/996** (hereinafter referred to as the suit property).

2. The plaintiffs' claim is premised on the grounds that the defendants secretly, illegally and fraudulently got the suit property registered in the name of the 1st defendant. In particular, the plaintiffs accuse the defendants of having relied on documents that did not relate to the succession of the estate of the deceased person to effect transfer of the suit property to the 1st defendant who had no legal right to be registered as the proprietor of the estate of the deceased or to succeed the deceased person. The 2nd defendant is also accused of having effected the registration in favour of the 1st defendant in disregard of a restriction which had been filed to restrain dealings with the suit property.

3. Arguing that the defendants conspired to defraud them and other beneficiaries of the estate of the deceased person their interest in the suit property, the plaintiffs urge the court to declare that the registration of the 1st defendant as the proprietor of the suit property was illegal, null and void and as such ought to be cancelled and the registration of the suit property reverted to the deceased person pending proper succession in respect thereof.

4. The 1st defendant through her statement of defence filed on **27th February, 2017** denied the allegation that the plaintiffs are the administrators of the estate of the deceased person and denied the allegation that she had no right to succeed the deceased person. She also denied any wrongdoing, illegality or fraud in the transfer of the suit property to her. She contended that the deceased had taken her as his wife hence entitled to inherit him. She explained that the deceased had built a house for her in the suit property and that she has been utilizing and occupying the suit property before and after the demise of the deceased. Sometime in the month of June 2016 the plaintiffs chased her from the suit property prompting her to report the incident to the police.

5. The 2nd defendant through the statement of defence filed on 6th July, 2017 denied any wrongdoing, fraud or conspiracy in effecting transfer of the suit property in favour of the 1st defendant.

6. When the matter came up for hearing, the parties reiterated their respective positions concerning the claim herein. In particular, the plaintiffs' through the testimony of the 2nd defendant maintained that there was fraud in transferring the suit property to the 1st defendant.

7. The 1st defendant maintained that there was no illegality or fraud in transfer of the suit property to her.

8. At close of hearing, parties to this suit filed submissions which I have read and considered.

9. From the pleadings filed in this matter and the submissions, I find the issues for the court's determination to be:-

- (i) Whether this court has jurisdiction to hear and determine the dispute presented before it?
- (ii) Whether the plaintiffs are the administrators of the estate of the deceased person herein?
- (iii) Whether there was fraud or illegality in transfer of the suit property to the 1st defendant?
- (iv) Whether the plaintiffs have made a case for being granted the orders sought or any of them?
- (v) What orders should the court make?

10. On whether this court has jurisdiction to hear and determine the suit herein, on behalf of the 1st defendant, reference is made to the pleadings filed in this matter and submitted that this court lacks jurisdiction to hear and determine the dispute herein as it relates to transmission of the suit property from its previous owner, the deceased person herein to the 1st defendant. According to the 1st defendant, the plaintiffs should have raised the issues concerning the grant relied on to effect transmission with the court which issued the impugned grant.

11. With regard to this question, having carefully read and considered the pleadings filed in this matter, I don't agree with the contention by the plaintiff that the plaintiffs are essentially challenging the grant allegedly relied on to effect the transfer or transmit the suit property to the 1st defendant as the plaintiffs' claim is that there was illegality or fraud in the transfer. Reference to the grant relied on to effect transfer to the 1st defendant is, in my view, merely particularizing the pleaded fraud or illegality in effecting the impugned transfer.

12. Whilst issues as to whether the 1st defendant was entitled to inherit the estate of the deceased person are also raised in the suit, I am of the considered view that that alone does not oust the jurisdiction of this court to investigate the pleaded fraud in effecting transfer of the suit property to the defendant as such an issue squarely falls within jurisdiction of this court.

13. The upshot of the foregoing is that this court has jurisdiction to hear and determine the issues raised in this suit as they relate to the propriety or otherwise of the title issued to the 1st defendant following the demise of the deceased person herein.

14. As to whether the plaintiffs have *locus standi* to file and prosecute this suit, a review of the documents filed in support of the plaintiffs' suit shows that the plaintiffs obtained limited grant of letters of administration ad litem authorizing them to file and prosecute this suit before they filed it. In that regard, see document number 1 in the plaintiffs' list of documents filed on 31st January, 2017 which confirms that fact. It is clear from the said grant of letters of administration that the plaintiffs were authorized to file and prosecute this suit as by law required.

15. On whether there was fraud in registration of the 1st defendant as the proprietor of the suit property, on behalf of the plaintiffs, reference is made to the evidence adduced by the plaintiffs showing that transfer of the suit property was effected pursuant to orders issued in Nyeri High Court Succession Cause No. 232 of 2013 which did not relate to the estate of the deceased person herein and the fact that the 1st defendant was unable to prove that she obtained grant of letters of administration in respect of the estate of the deceased before the suit property was transferred to her and reiterated that there was fraud or illegality in transferring the suit property to the 1st defendant. The testimony of the chief to the effect that the letter he wrote to the 1st defendant was not meant for introducing her to the authorities for succession of the estate of the deceased person herein is said to be in support of the plaintiffs' contention that there was fraud in effecting transfer of the suit property to the 1st defendant.

16. As to whether there was fraud in the registration of the 1st defendant as the proprietor of the suit property, the evidence adduced in this matter shows that there may have been fraud in the registration of the suit property. In that regard, it is noted that the documents relied by the 1st defendant to effect transfer of the suit property in her favour are suspicious, for instance, the letter issued to her by the area chief was not meant to introduce her as a beneficiary of the estate of the deceased yet she used it in support of her application for transfer of the suit property into her name. It is also noteworthy that the grant relied on to effect transfer of the suit property to the 1st defendant did not relate to the estate of the deceased person herein.

17. In the circumstances of this case where the plaintiffs were able to show that the registration of the 1st defendant as the proprietor of the suit property was tainted with a number of procedural flaws, the burden shifted to her to prove that her registration as the proprietor of the suit property was not tainted with fraud or procedural flaws, something she failed to do. In that regard, it is noteworthy that the 1st defendant could not tell whether grant of letters was issued to her in respect of the suit property to warrant a determination that the transmission of the suit property to her was lawful.

18. The upshot of the foregoing is that the plaintiffs have made up a case of being granted the orders sought, which I hereby grant them as sought.

Dated, signed and delivered in open court at Nyeri this 3rd day of April, 2019.

L N WAITHAKA

JUDGE

Coram:

Athanasius Herman – plaintiff

Mr. Kiama h/b for Mr.King'ori for the 1st defendant

N/A for the 2nd defendant

Court assistant - Esther