



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 286 OF 2013

MELISA AKUMU SONGORO.....PLAINTIFF

VERSUS

ERNEST TWABWALABA

EUNICE KHALITAVA KHISA

ENOS MATANGWE SIKOYO.....DEFENDANTS

JUDGEMENT

The plaintiff's case is that, during his lifetime, the deceased, who was the husband of the plaintiff, was the registered proprietor of L.R. NO. East Wanga/Mung'ang'a/222 and at the point of his demise he was still the registered proprietor. That it has come to the attention of the plaintiff that the defendants have jointly sub divided the estate of the deceased and registered the same into their names. That the plaintiff holds that such sub-division was fraudulent and did not follow due process of the law. The plaintiff prays for judgment against the defendants jointly and/or severally for:

- (a) Nullification of the sub-division emanating from L.R. No. East Wanga/Mung'ang'a/222.
- (b) Costs of the suit.

PW1 testified that the 1st defendant is her son and 2nd defendant is not known to her. The 3rd defendant is a neighbour. Her husband died in 1994 before subdividing the land. She reported the matter to the police and they was a criminal case in the Mumias Court. PW2 a registration officer in Mumias confirmed that the thumb print on the plaintiff's ID and the one on the mutation form were not the same (PEx 6). PW1 maintains that she never took out letters of administration of her deceased's husband's estate and yet the green card shows she acquired the land in 2007 through succession (PEx2).

The defendants aver that during his life time, the deceased was the husband of Lebhora Akhabere Singoro, the 1st wife and Melisa Akumu Singoro, the plaintiff herein, the 2nd wife. The deceased was the registered proprietor of that parcel of land designated as East Wanga/Mung'ang'a/222 but before he died, he had sub divided the land into 3 parts, the 1st part was given to the 1st defendant, the 2nd remained with the deceased and the 3rd was given to Beda Angatia Singoro, the deceased's first born son, from the first family, who is now deceased, and his portion having been inherited by Eunice Khalitava Khisa, the 2nd defendant herein. The deceased personally sub divided the land, planted boundaries and even obtained the consent of the land control board for the transfer of the said portions to their respective recipients. He died while new titles were being processed. The defendants aver that they have not at all interfered with the boundaries laid down by the deceased and neither have they unfairly benefited from the land. The defendants deny the allegations of fraud and aver that the plaintiff has all along been aware of the happening on the land which is in conformity with the deceased's wishes. All the particulars of fraud pleaded are therefore denied as the defendants merely completed the deceased's process by only paying the requisite fee which the deceased had lacked before he died. The defendants further aver that many other numbers have since been created out of the 4 numbers mentioned in the plaint, a fact that is well known to the plaintiff and the plaintiff is therefore guilty of non-joinder of parties.

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 3rd defendant is the sole registered owner of land parcel East Wanga/Mung’ang’a/1437 and land parcel East Wanga/Mung’ang’a/1439. The issue for determination is whether or not he hold good title. I have carefully considered that documentary evidence before me. PW1 testified that her husband died in 1994 before subdividing the suit land East Wanga/Mung’ang’a/222 registered in his name. PW2 a registration officer in Mumias confirmed that the thumb print on the plaintiff’s ID and the one on the mutation form were not the same (PEx 6). PW1 maintains that she never took out letters of administration of her deceased’s husbands estate and yet the green card shows she acquired the land in 2007 through succession (PEx2). On perusal of the said green card it is clear that the suit land was transferred to the plaintiff on 30th April 2007 through succession. The same was subdivided 4 times on the 15th March 2010. No evidence of the alleged succession cause was tendered in this court. I find that the suit land was fraudulently transferred and the defendants cannot claim that they have good title. Any other further and subsequent subdivisions will be null and void. I find that the subsequent titles were obtained by fraud or misrepresentation and cannot be allowed to stand. The plaintiff who was the beneficiary of the Late Boniface Songoro Shikhuti’s estate (the deceased was the registered proprietor of L.R. NO. East Wanga/Mung’ang’a/222) neither took out letters of administration nor did she sign the mutation forms to allow the subdivision. She therefore could not have legally transferred the suit property to third parties. I find that the plaintiff has proved her case on a balance of probabilities and I grant the following orders;

1. Nullification of the sub-division emanating from L.R. No. East Wanga/Mung’ang’a/222 and the same to be subjected to succession proceedings
2. Each party to bear their own costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 8TH DAY OF MAY 2019.

N.A. MATHEKA

JUDGE