



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 187 OF 2016

ALIS HARIFF ABDALLA.....PLAINTIFF

VERSUS

ABUBAKAR MUHDHAR SHEE ALI

GHALIB MUHDHAR SHEE ALI.....DEFENDANTS

JUDGMENT

BACKGROUND

1. In his Complaint dated 1st July 2016 and filed herein on 20th July 2016, Ali Shariff Abdallah (the Plaintiff) prays for Judgment against the two Defendants for orders framed as follows:-

i. An order revoking the registration of Mukdhar Shee Ali as the registered owner of Plot No. 965 Malindi registered as CR 14601 and all other entries indicating persons other than Sheikh Bate as owner thereof restoring the name of Sheikh Bate as the legal owner of the said land.

ii. Any other relief that this Honourable Court may deem just and fair to grant in this suit.

2. The above prayers are premised on the Plaintiff's contention that Plot No. 965 Malindi (the suit property) was originally registered in the name of the Plaintiff's great grandfather, one Sheikh Bate who was also known as Ahmed. On or about 29th July 1974, the Recorder of Titles appointed an agent of the Public Trustees for Lamu and Kilifi as the administrator of the Estate of the said Sheikh Bate. However on 1st August 1991, the Defendants' father one Muhdhar Shee Ali was registered as the owner of the said suit property on the purport that he was the heir to one Sheikh Abubakar and Mwanasha Shariff to whom the property had been transferred.

3. It is the Plaintiff's case that the registration of Muhdhar Shee Ali as the owner of the suit property was fraudulent, illegal, wrong, unprocedural or a mistake and the same ought to be rectified accordingly.

4. In their Statement of Defence dated and filed herein on 13th September 2016, the Defendants admit that the said Sheikh Bate alias Ahmed was the registered owner of the suit property as well as Plot No. 966 Malindi. They however deny that the registration of Muhdhar Shee Ali as the owner of the land was fraudulent as alleged by the Plaintiff or at all.

5. According to the Defendants, their father the said Muhdhar Shee Ali together with Sheikh Abubakar and Mwanasha Shariff were among the beneficiaries of the Estate of Sheikh Bate. They assert that both the suit property and Plot No. 966 Malindi was registered in their father's name after he purchased the shares of both the said Sheikh Abubakar and Mwanasha Shariff on 30th July 1991. They urge this Court on that basis to dismiss the Plaintiff's suit with costs.

The Plaintiff's Case

6. At the trial herein, the Plaintiff testified on his behalf as PW1 and did not call any other witnesses. He told the Court that the suit property was originally registered in the name of his great grandfather Sheikh Bate. Sometime on 29th July 1974, the Recorder of Titles appointed an agent of the Public Trustees for Lamu and Kilifi as the Administrator of the Estate of his said great grandfather.

7. PW1 further testified that on 17th September 1990, a transfer of the land was done in favour of Sheikh Abubakar and Mwanasha Shariff on account that they were the heirs of the late Sheikh Bate. Subsequently on 1st August 1991, Muhdhar Shee Ali the father of the Defendants

was registered as the owner of the share of Mwanasha Shariff and Sheikh Abubakar.

8. PW1 told the Court that the said registration was fraudulent, illegal, wrong, unprocedural or a mistake as the late Sheikh Bate was survived by two children-Abubakar Ahmed and Sheikham Ahmed. PW1 testified that upon the death of the two heirs above, they were survived by a number of children almost all of whom died without children.

9. PW1 further told the Court that Sheikhan Ahmed was survived by one child Abdalla Sheikhan and it is only the said Abdalla Sheikhan who was according to the Islamic Law the sole heir of the Estate of Sheikh Bate as of 7th July 1983. PW1 told the Court that the said Abdalla Sheikhan was his father and that it is only himself and his two siblings Swaleh Shariff Abdalla and Shuffei Shariff Abdalla who are the proper heirs of the Estate. He accordingly urged the Court to enter Judgment in his favour.

The Defence Case

10. The 1st Defendants filed a lengthy Statement of Defence herein but neither himself nor his Advocate on record was in Court when the suit came up for hearing. He did not therefore offer any evidence in support of his position. His Advocate however filed closing submissions. The case against the initial 2nd Defendant was withdrawn and substituted by that of Husna Muhdhar Shee Ali by an order of this Court issued on 15th September 2016.

Analysis and Determination

11. I have perused and considered the pleadings filed herein by both parties as well as the sole testimony of the Plaintiff. I have equally perused and considered the evidence presented before me and the Written Submissions as filed by the Learned Advocate for Defendants. The Plaintiff did not file any submissions.

12. The Plaintiff pleads for an order rectifying the register by cancelling the name of Muhdhar Shee Ali as the registered owner of Plot No. 65 Malindi(CR No. 14601) and in its place substituting and/or restoring the name of Sheikh Bate as the owner thereof. It is the Plaintiff's case that the registration of the name Muhdhar Shee Ali as the owner of the suit property was fraudulent, illegal and unprocedural as he was not the rightful heir of the Estate of the said Sheikh Bate.

13. The Defendant however denies that the registration was fraudulent as alleged or at all. It is the Defence case that his father the said Muhdhar Shee Ali was together with Sheikh Abubakar and Mwanasha Shariff the heirs of the Estate of the late Sheikh Bate. It was further the Defendant's case that his father Muhdhar Shee Ali purchased the shares of the other two heirs to the Estate of the late Sheikh Bate and thereby became the sole owner thereof.

14. The Plaintiff asserts that his father Abdalla Sheikhan was the sole surviving grandchild of Sheikh Bate as at 7th July 1983 and that by dint of Islamic Law, it was his said father who was the sole heir of the Estate of the late Sheikh Bate. He accordingly traces his entitlement to the suit property to the said lineage of his father.

15. I note however that while he anchors his case on alleged fraud, illegality and failure to follow the laid down procedures, he offers nothing much in evidence of the same. Indeed rather than particularize the particulars of fraud, illegalities or mistake at paragraph 8 of the Plaintiff's case as headlined, the Plaintiff instead provides what appears to be the family tree right from his great grandfather Sheikh Bate to himself.

16. A perusal of the Certificate of Ownership of the suit property measuring 0.0664 of an acre produced by the Plaintiff shows that the same was issued to an agent of the Public Trustee as an Administrator of the Estate of Sheikh Bate (the Plaintiff's great grandfather) on 29th July 1974. The said parcel of land was on 17th September 1990 transferred to Sheikh Abubakar and Mwanasha Sharriff as the heirs at law.

17. The Certificate further shows that by a transfer dated 18th July 1991 the shares of Mwanasha Sharriff were transferred to the Defendant's father-Mohdhar Shee Ali. Two weeks later on 30th July 1991, the shares of the other heir Sheikh Abubakar were again transferred to the Defendant's father at a consideration of Kshs 20,000/-. The Defendant's father remains the registered proprietor of the suit property to-date.

18. As it were, the Plaintiff has not placed anything before me to demonstrate that the Defendant's father did not purchase the shares as indicated in the instrument of transfer. Having acquired shares from the only two heirs shown in the Certificate of Ownership, and in the absence of any evidence of wrong doing, it can only be presumed that the Defendant acquired a good title for the suit property which remains registered in his name to-date.

19. From the material placed before me, it is evident that the Plaintiff's father died on 7th July 1983 while the Defendant's father died on 8th October 1999. It was not clear to me why the Plaintiff failed to make a claim against the Defendant's father during his lifetime given that he died about eight years after he acquired the suit property and it was registered in his name.

20. At any rate, this being a claim for land which was transferred way back in 1991, I did not think it was open for the Plaintiff to file a suit in regard to the same in the year 2016 in the absence of any leave granted by the Court without offending the provisions of the Limitation of Actions Act.

21. In the circumstances herein, I did not find any merit in the Plaintiff's case. The same is dismissed with costs to the Defendants.

Dated, signed and delivered at Malindi this 26th day of June, 2019.

J.O. OLOLA

JUDGE