



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 17 OF 2017

SALOME LIARIM.....PLAINTIFF

VERSUS

DANIEL SHABAN.....DEFENDANT

JUDGEMENT

By a plaint dated 29th January 2015, the subject matter herein is land parcel No. Nzoia/Moi's Bridge/Block 1/3093 registered in the plaintiff's name. That the plaintiff had two marriages which failed that made her sought for her own land. That the plaintiff's first marriage, she was blessed with two issues namely Bakari Mohammed and Rose Khavere. While in the plaintiff's second marriage she was blessed with two issues namely Daniel Shaban and Grace Shiravile. That since the plaintiff's second marriage failed again, the plaintiff joined her sister at Moi's Bridge by the name Ezina Muhavi now deceased and started assisting her with work at home on understanding that her said sister would buy her land instead of paying her salary. That the plaintiff avers that land was bought for her by her deceased sister whom she had worked for several years and a house was built for her (the plaintiff) and she occupied the said land. That after the plaintiff had settled in her bought land, the defendant joined her after he deferred with his father and started staying with her. That the plaintiff avers that the defendant became cruel and hostile to her chased her away and colluded with the area Chief to place a caution on her land and as a result the plaintiff has been rendered landless. The plaintiff's efforts to go back to her land have been rendered nugatory due to the defendant's hostility and the plaintiff claims for an eviction order and the removal of the restriction. The plaintiff prays for judgment against the defendant for:-

- (a) Vacant possession and eviction.
- (b) An order of permanent injunction restraining the defendant, his agents and/or servants from laying claim and/or trespassing into L.P.N. Nzoia/Moi's Bridge/Block 1/3093.
- (c) Costs of this suit.

The plaintiff failed to attend court during the hearing despite having been served with the hearing notice and her case was dismissed for non attendance and the court proceeded with the counterclaim.

The defendant stated that the plaintiff became the owner of the land in dispute after the defendant who is a businessman supported and gave in a sum of Ksh. 100,000/= as part of the purchase price with mutual understanding that the plaintiff will sub-divide and transfer a portion measuring approximately one (1) acre as defendant's share. The defendant further states that both the defendant and the plaintiff were staying in a village known as Kapkangani before shifting to Matunda farm Nzoia/Moi's Bridge Block 1/3093 in the year 1995 and established a homestead where the defendant and the plaintiff have been staying as mother and son peacefully without any interference. The defendant denies the allegations of being cruel and or chasing his mother, the plaintiff herein at any given time and or becoming hostile and colluding with the area Chief. The defendant states that the plaintiff voluntarily went to stay with one of her sons in her first marriage. The defendant in his counter claim prays for judgment against the plaintiff as for:-

- (a) The plaintiff's case be dismissed with costs.
- (b) Cancellation of title No. Nzoia/Moi's Bridge/Block 1/3093 and the plaintiff be compelled to transfer one acre of the land parcel No. Nzoia/Moi's Bridge/Block 1/3093, in default of the plaintiff transferring the said parcel voluntarily, the Deputy Registrar be empowered to sign all relevant forms to effect the transfer.

DW2 the plaintiff's uncle gave evidence that the plaintiff has given the defendant 1 acre of the said land and the latter resides there.

This court has carefully considered the evidence therein. The plaintiff failed to attend court nor provide any oral evidence. 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 that the plaintiff is the absolute registered owner of the parcel of land known as Nzoia/Moi’s Bridge/Block 1/3093. The defendant testified that he is a businessman and supported and gave in a sum of Ksh. 100,000/= as part of the purchase price with mutual understanding that the plaintiff will sub-divide and transfer a portion measuring approximately one (1) acre as defendant’s share. The defendant further states that both the defendant and the plaintiff were staying in a village known as Kapkangani before shifting to Matunda farm Nzoia/Moi’s Bridge Block 1/3093 in the year 1995 and established a homestead where the defendant and the plaintiff have been staying as mother and son peacefully without any interference. DW2 the plaintiff’s uncle gave evidence that the plaintiff has given the defendant 1 acre of the said land and the latter resides there. DW2 gave evidence contradicting the plaintiff’s evidence that he contributed to the purchase price. No evidence has been adduced of the defendant’s contribution to the purchase price. The only documentary evidence produced in court shows that there was a dispute between the parties and the defendant intended to place a caution on the suit land. The plaintiff in her pleadings avers that the defendant became cruel and hostile and chased her away and colluded with the area Chief to place a caution on her land and as a result the plaintiff has been rendered landless. I find no evidence of fraud or misrepresentation on the part of the plaintiff to warrant this court to cancel her title. I find the counterclaim has not been proved on a balance of probabilities and I dismiss the same. No orders as to costs as the parties are mother and son.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 26TH JUNE 2019.

N.A. MATHEKA

JUDGE