



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 1113 OF 2016 (OS)

GEORGE OUMA OKOTH.....APPLICANT

VERSUS

STEPHEN KIRIBA KINORO.....RESPONDENT

AND

CHARLES MURATHE KIBIRA.....1ST INTERESTED PARTY/APPLICANT

MARY WANJIRU KIRIBA.....2ND INTERESTED PARTY/APPLICANT

JUDGEMENT

1. This is the originating summons dated 9th September 2016 summons brought under Order 37 rule 3 of the Civil Procedure Rules and Section 3 of the Civil Procedure Act.

2. It seeks:-

- 1. That the honourable court be pleased to grant a vesting order for LR No. 7785/441 to George Ouma Okoth.***
- 2. That the Registrar of Lands do register the applicant George Ouma Okoth as the owner of LR No. 7785/441 in place of the respondents.***
- 3. That the Deputy Registrar of this court be authorized to execute the transfer and any other necessary documents to effect the transfer.***
- 4. That costs be in the cause.***

3. The grounds are on the face of the application and are:-

- 1. That the applicant purchased the property from the respondent.***
- 2. That the respondent has refused to surrender the original title to the applicant.***

4. The originating summons is supported by the affidavit of George Ouma Okoth, the applicant herein sworn on the 9th September 2016.

5. The interested parties did file a response to the originating summons and put in written submissions.

The Interested Parties Submissions

6. The deceased passed on way back on 14th February 2006 as shown in the certificate of death. The process server Ezekiel Maseu could not have served the defendant on 15th September 2016 at his place of residence in Rumwe Runda Estate as he was deceased by then. The orders sought by the plaintiff and the entire suit is tainted with fraud and forgery as per the certificate of death the defendant passed on, on 4th

February 2006. High Court Succession No 1568 of 2009 was filed in Nairobi and the estate of the defendant (Deceased) was duly distributed and a certificate of confirmation of grant issued on 30th June 2016 by the Hon. Lady Justice Muigai.

7. The Interested Parties pray that the suit be dismissed with costs. There was never any contract of sale agreement entered as between the plaintiff and the defendant who passed on 8 years prior to the execution of the agreement for sale of the said parcel of land.

The Plaintiffs submissions

8. The plaintiff purchased the suit property from its registered owner on 17th May 2014. The defendant after receiving the entire purchase price declined to surrender the original title to the suit property to the plaintiff to enable him lodge the completion documents at the lands office in order to effect transfer of the suit property in his name. Despite being duly served with the pleadings the defendant did not file any response nor did he attend court for the hearing. The plaintiff has made a case that he has complied fully with all his obligations therein including payment of the entire purchase price of Kshs.5 million.

9. He has put forward the case of **Mumo Mutisya vs Donwoods Company Limited [2016] eKLR**. He urges that the prayers sought be granted.

10. I have perused and considered the pleadings, the affidavits in support and in opposition. I have also considered the submissions filed by the parties. The issues for determination are:-

i. Whether the plaintiff entered into an agreement for purchase of LR NO. 7785/441 from the defendant (deceased).

ii. Whether the plaintiff paid the full purchase price.

iii. Whether a vesting order ought to issue to the plaintiff in respect of LR NO. 7785/441.

iv. Is the plaintiff entitled to the reliefs sought?

v. Who should bear costs?

11. It is the plaintiff's case that he bought LR NO. 7785/441 from the defendant. The sale agreement was executed on 17th May 2014. He further told the court that the defendant declined to surrender the original title to enable him effect a transfer. It is the interested parties case that the defendant could not have executed the sale agreement as he passed on, on 14th February 2006. They have annexed a certificate of death to confirm this.

12. I have perused the said agreement dated 17th May 2014. The same is annexed to the originating summons. The purchase price is Kshs.5,000,000 of which Kshs.4,000,000 was paid on execution. The balance of Kshs.1,000,000 was to be paid within 14 days from the date of the sale agreement.

13. I have also perused the certificate of death exhibited by the interested parties. It confirms that Stephen Kiriba Kinoro died on 14th February 2006. I have also perused the certificate of confirmation of grant which shows that the suit property being LR 7785/441 was to be shared equally among the beneficiaries of the deceased. In view of the above, the said Stephen Kiriba Kinoro could not have been alive in order to execute the sale agreement on 17th May 2014. His signature on the sale agreement could therefore be a forgery.

15. It is not in doubt that on 1st December 2009 letters of administration intestate in respect of the deceased estate were issued to Peter Kamau Kiriba, John Muchiri Kiriba and George Ndungu Kiriba. I therefore find that the purported signature of Stephen Kiriba Kinoro on the sale agreement must have been a forgery. In essence there was no sale agreement between the plaintiff and the deceased on 17th May 2014.

15. Order 37 rule 3 of the Civil Procedure Rules provides as follows:-

“A vendor or purchaser of immovable property or their representatives respectively may, at any time or times take out an originating summons returnable before the judge sitting in chambers for the determination of any question which may arise in respect of any requisitions or objections or any claim for compensation or any other question arising out of or connected with the contract of sale (not being a question affecting the existence or validity of the contract)”.

16. In this suit the plaintiff seeks to enforce the sale agreement dated 17th May 2014. As stated earlier the alleged vendor Stephen Kariba Kinoro was deceased by then. Even if he was alive there was no evidence by the plaintiff to confirm that money exchanged hands. The purported sale agreement appears to be a forgery. The certificate of death exhibited by the interested parties has not been challenged.

17. I find that the plaintiff has failed to prove his case as against the interested parties. The purported transfer dated 17th May 2014 also appears to be a forgery. I find no merit in the originating summons dated 9th September 2016 and the same is dismissed with costs to the 1st, and 2nd interested parties.

It is so ordered.

Dated, signed and delivered in Nairobi on this 18TH day of SEPTEMBER 2019

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendant

.....Advocate for the Interested Parties

.....Court Assistant