



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**ELC CASE NO. 522 OF 2014**

**ETTA MIDEVA MADETE.....PLAINTIFF**

**VERSUS**

**JANET I. MUGISA.....DEFENDANT**

**JUDGEMENT**

The plaintiff states that land parcel No. Kakamega/Bulukhoba/64 measuring approximately 3.8 hectares was purchased by the joint efforts of the plaintiff and her deceased husband one John Madete Mukhaya. That on 11<sup>th</sup> June 1976 the above parcel was subsequently registered in the name of the said deceased but on a verbal agreement that the same was family land and that it was being registered as such in the name of the deceased on trust for the plaintiff and the immediate family members. That the plaintiff and her said deceased husband then entrusted the said parcel of land to one Joseph Mukhaya the father in law and father of the plaintiff and the deceased respectively as a caretaker. That upon the said caretaker becoming ill and unable to continue with his job, the plaintiff and the said deceased entrusted the defendant's husband to become the new caretaker. That the defendant took advantage of her husband's invitation to the land as a caretaker and has fraudulently gotten herself registered as the proprietor of the suit parcel. That the plaintiff discovered this in 2009 when the defendant's husband became ill and subsequently passed on. The plaintiff prays for judgment against the defendant for:-

- (a) An order declaring that the registration of the defendant or any other prior or subsequent person in respect of land parcel No. Kakamega/Bulukhoba/64 is subject to an existing trust created over the said land in favour of the plaintiff.
- (b) That the registration of the defendant or any other subsequent person as the proprietor of the suit parcel be nullified and title deed issued in the name of the plaintiff.
- (c) That the defendant, her family members, agents and or assignees be evicted from the above parcel of land.
- (d) Costs of this suit.

The defendant states that she duly purchased the whole of the parcel of land known as Kakamega/Bulukhoba/64 from the late John Madete Mukhaya who duly executed all the necessary documents of transfer in favour of the defendant and ultimately caused the registration of the suit parcel of land in favour of the defendant in 1981, upon settlement of the agreed purchase price. The defendant avers that upon obtaining title to the suit land the defendant took immediate possession of the purchased land and has been occupying the same continuously, openly and without interruption since that date. The defendant avers that the defendant has developed the land aforementioned by building a house thereon, planting a tea crop, trees and other crops to-date. The defendant specifically denies the allegation made by the plaintiff on account of fraud. The defendant avers that the plaintiff has always seen the defendant occupying the suit land and developing it and if the plaintiff had any interest in the same, the plaintiff would have come to court much earlier. The defendant avers that the land having been duly registered in the defendant's name, the defendant had every right to charge it and secure loans, and this should not be construed to be fraud. In any case the defendant had duly settled the loan and the matter is only pending registration of discharge of charge.

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. The Judge 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 the defendant is the registered proprietor of Land parcel No. Kakamega/Bulukhoba/64. The plaintiff testified that land parcel No. Kakamega/Bulukhoba/64 measuring approximately 3.8 hectares was purchased by the joint efforts of the plaintiff and her deceased husband one John Madete Mukhayo. That on 11<sup>th</sup> June 1976 the above parcel was subsequently registered in the name of the said deceased but on a verbal agreement that the same was family land and that it was being registered as such in the name of the deceased on trust for the plaintiff and the immediate family members. PW2 and PW3 corroborated her evidence. The defendant testified that she bought the land from one John Madete Mukhayo and was registered as the proprietor way back in 1981. She produced the transfer documents, land register and the loan agreement as evidence. The defendant has built her homestead and developed the land and the plaintiff has never stayed on the suit land. I find that the defendant having been registered in 1981, the plaintiff is barred by the Statute of Limitations of Actions Act. I am also satisfied from the documentary evidence adduced that the defendant acquired the title legally and there was no fraud or misrepresentation. I find the plaintiff has failed to prove his case on a balance of probabilities and I dismiss it. There will be no orders as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 27<sup>TH</sup> NOVEMBER 2019.**

**N.A. MATHEKA**

**JUDGE**