



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 287 OF 2015

ODERA INDAKWA.....PLAINTIFF

VERSUS

EMMANUEL OMUMASABA

LAND REGISTRAR KAKAMEGA.....DEFENDANTS

JUDGEMENT

The plaintiff avers that at all material times, land parcel No. E. Wanga/isongo/668 measuring 10.5 acres or 4.25 hectares has been owned and registered in the name of the plaintiff. At all material times, the plaintiff has been the administrator of the said land parcel pursuant to succession cause No. Kakamega HCCC Succession No. 539 of 2006 whose ruling was delivered on 23rd June 2015 and same is subject of pending appeal. Without any color of right and or justification, the 1st defendant with assistance of the 2nd defendant have had the entire land parcel foregoing transferred into the 1st defendant's name. The plaintiff's prayer against defendant is for nullification of the title deed issued on 23rd October, 2015 for the suit land so that the land reverts to the plaintiff. Other than existence of Kakamega HC Succession No. 539/2006 there is no other proceedings between the parties on same subject land. The plaintiff prays for judgment against defendants for orders:-

- (a) Nullification of title deed.
- (b) General damages.
- (c) Costs.

The plaintiff testified that in 2018 he did a search and found out that the land was now registered in their joint names. He lives on the land and the 1st defendant is his cousin.

The 1st defendant avers that title No. E/Wanga/Isongo/668 which was initially registered in the name of the plaintiff was nullified by the High Court vide Kakamega HC Succession Cause No. 539 of 2006 and as such the plaintiff lost and has no claim over the said title. That the plaintiff's letters of administration were nullified by the succession court in the cause afore quoted and fresh letters were then issued to the 1st defendant. The 1st defendant is not aware of any pending appeal following the said decision. The 1st defendant avers that he obtained legal authority from the succession cause to deal with the land parcel in dispute and in fact dealt as per the decision of the court by first acquiring title to the said land and then initiating the subdivision process with a view to transferring 5 ½ acres to the plaintiff, which process is still ongoing despite spirited opposition by the plaintiff. The 1st defendant prays that the plaintiff's suit be dismissed with costs. The 1st defendant testified that the title was first put in his name but was later rectified to read both names as per the court order.

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 plaintiff and the 1st defendant are the joint registered proprietors of Land Parcel No. E. Wanga/Isongo/668 (copy of the green card DEx3 confirms the same. The 1st defendant testified that title No. E/Wanga/Isongo/668 which was initially registered in the name of the plaintiff was nullified by the High Court vide Kakamega HC Succession Cause No. 539 of 2006. The 1st defendant avers that he obtained legal authority from the succession cause to deal with the land parcel in dispute and in fact dealt as per the decision of the court. I have perused the said ruling of the Kakamega HC Succession Cause No. 539 of 2006. The same stated that;

“The grant issued herein is hereby confirmed in the following terms;

Plot number East Wanga/Isongo/688

1. Emmanuel Odera Omumasaba – 5 acres

2. Silas Odera Indakwa – 51/2 acres

A certificate of confirmed grant shall be issued in the name of the objector who shall facilitate the transfer of the said land to the two beneficiaries.”

It is now up to the parties to effect the court order and any dispute should be pursued in that case and/or court. The plaintiff pleaded fraud in their plaint however, he did not prove the same. I find the plaintiff has failed to prove his case on a balance of probabilities and I dismiss it with no orders as to costs.

It is so ordered.

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

N.A. MATHEKA

JUDGE