



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 268 OF 2014

PETER MUHATI SOMOYA.....PLAINTIFF

VERSUS

PETER ARUMANA KHAYEKA

BONIFACE IMBALI MUDI.....DEFENDANTS

JUDGEMENT

The plaintiff avers that he is the administrator of the estate of Somoywa Tafali. The plaintiff avers that land parcel No. Idakho/Iguhu/ 1866 is a sub-division of land parcel No. Idakho/Iguhu/607. The plaintiff avers that land parcel No. Idakho/Iguhu/607 was registered in the name of his father Samoya Tofali who passed away on 3rd March 1994. The plaintiff avers the defendant is not one of the beneficiaries of the estate of his late father. The plaintiff avers that the 1st defendant on 5th January 1998 fraudulently caused to be registered the owner of land parcel No. Idakho/Iguhu/1866 long after the death of his father. The plaintiff avers that the 1st defendant purported to transfer land parcel No. Idakho/Iguhu/1866 to the 2nd defendant on 5th August, 2014 when the case was on going. The plaintiff avers that the 1st defendant had no good title to pass to the 2nd defendant and therefore the registration of the 2nd defendant as proprietor thereof is equally unlawful and it should be so declared. The plaintiff's prayer against the defendant is for cancellation of the defendant from the register and in his place the plaintiff's name be registered. The plaintiff's prayer against the defendants jointly and severally is for cancellation of the 1st and 2nd defendants' names from the register of land parcel No. Idakho/Iguhu/1866 and the plaintiff be registered as owner thereof. The plaintiff prays for judgment to be entered against the defendants' jointly and severally for;

1. The cancellation of the 2nd defendant's name from the register and in its place the name of the plaintiff be inserted/registered.
2. Costs of the suit.
3. Interest on (b) above.

The defendants aver that L.R. Kakamega/Iguhu/607 (0.7 Ha) was subdivided by Samoywa Tofali the registered owner resulting into L.R. Kakamega/Iguhu/1866, 1867 and 1868. The defendants avers that the said Samoya Tofali then transferred L.R. No. Kakamega/Iguhu/1866 (0.46 ha) to his daughter Agnes Khasiala Isomoyia as a gift during his lifetime who in turn sold for value and transferred the same to the 1st defendant herein Peter Arumama Khayeka. The defendants aver that the 1st defendant having obtained a good title then sold for value and transferred L.R. Kakamega/Iguhu/1866 (0.46 Ha) to the 2nd defendant herein Bonface Imbali Mudi. The defendants aver that L.R. Kakamega/Iguhu/1866 (0.46 Ha) did not form part of any estate in any succession cause which was filed. The defendants avers that this suit does not disclose any reasonable cause of action, is legally incompetent and unsustainable. The defendants pray that this honourable court be pleased to dismiss this suit with costs.

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 2nd defendant is the registered proprietor of Land parcel No. Idakho/Iguhu/1866. The plaintiff testified that land parcel No. Idakho/Iguhu/1866 is a sub-division of land parcel No. Idakho/Iguhu/607. The plaintiff avers that land parcel No. Idakho/Iguhu/607 was registered in the name of his father Samoya Tofali who passed away on 3rd March 1994. The plaintiff avers the defendant is not one of the beneficiaries of the estate of his late father. The plaintiff avers that the 1st defendant on 5th January 1998 fraudulently caused to be registered the owner of land parcel No. Idakho/Iguhu/1866 long after the death of his father. He produced the death certificate as evidence in court. He lived in Nairobi and admits that his father had subdivided the land into three. DW1 the 1st defendant testified that he bought the land from the said Samoya Tofali daughter called Agnes Khasiala Isomoyia in 1998 and he produced the sale agreement DEx1 and the search indicated that she was the registered owner DEx2 he later sold it to the 2nd defendant. The said suit land was hence not subject to any succession proceedings. DW2 testified that he is an innocent purchaser for value. I find that the 1st defendant indeed lawfully acquired title of the suit land in 1998 when he purchased the same from one Agnes Khasiala Isomoyia who was the registered proprietor at the material time. He subsequently passed on the title to the 2nd defendant one Boniface Imbali Mudi. 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 costs to the defendants.

It is so ordered.

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

N.A. MATHEKA

JUDGE