



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 122 OF 2018

ALI OMAR KALAMA.....PLAINTIFF

VERSUS

ROBERT KATANA.....DEFENDANT

JUDGMENT

1. By a Plaintiff dated and filed herein on 7th June, 2018, Ali Omar Kalama (the Plaintiff) prays for Judgment to issue against the Defendant as follows: -

a) an order to the Land Registrar – Kilifi Land Registry to cancel the registration of the Defendant as the owner of Title No. Kilifi/Ngerenyi/310 and in his place register the said title in the name of the Plaintiff (who is) the administrator of the estate of the deceased;

b) an order that the Registrar do cancel the said registration of the Defendant without requiring the Plaintiff to produce the Original Title Deed of the suit property other than this court's order;

c) (a) permanent injunction restraining the Defendant by himself, his servant or agents and any person claiming through him from trespassing upon the suit property, from selling, building any structures, charging, fencing or dealing with the suit property in any manner; and

d) costs of this suit and interests thereon.

2. Those prayers are premised on the Plaintiff's contention that the said parcel of land belongs to the late Omar Charo alias Katana Charo who passed away on 5th January, 1991. The Plaintiff who is the Administrator of the Estate of the deceased asserts that the Defendant fraudulently caused the title to be registered in his name on or about 29th August, 2006. Thereafter in May 2017, the Defendant proceeded to fence off part of the suit property on the purport that he was the owner thereof.

3. It is the Plaintiff's case that the registration of the suit property in the Defendant's name was procured through an illegal process and that the same is null and void.

4. Upon being served with the summons herein, Robert Katana (the Defendant) filed a Memorandum of Appearance on 29th June, 2018. He did not however file a Defence or participate in these proceedings.

5. At the trial herein, the Plaintiff testified as the sole witness in his case. Adopting his statement as filed herein on 7th June, 2018, the Plaintiff told the court that the late Omar Charo alias Katana Charo was the original owner and allottee of the suit property which measures about 5 – 6 Ha having been allocated the same by the Settlement Fund Trustees. The late Omar Charo however passed away on 5th January, 1991 before a title deed could be issued in his name.

6. The Plaintiff told the court that the Defendant came to settle in an adjacent parcel of land bordering the suit property. Sometime in the month of May, 2017, the Defendant entered the suit property and proceeded to fence off half of it. When the Plaintiff confronted the Defendant, the Defendant told him that he was the owner of the suit property. The Plaintiff then carried out a search at the Kilifi Lands Registry from where he learnt that the Defendant was indeed registered as the proprietor of the suit property on 29th August, 2006.

7. The Plaintiff avers that they buried the late Omar Charo on the land and that they have occupied the same as a family ever since. He told the court that the Defendant has never occupied the property and that his registration as the owner thereof was made by mistake,

misrepresentation or fraud.

8. I have perused and considered the pleadings filed herein, the oral testimony of the Plaintiff as well as the evidence produced at the trial herein.

9. The Plaintiff instituted this suit in his capacity as the Administrator of the Estate of the late Omar Charo alias Katana Charo. As indicated in a copy of the Death Certificate produced herein by the Plaintiff, the deceased passed away on 5th January, 1991. The Plaintiff told the court that following his death, the deceased was buried on the suit property which belonged to him.

10. It was the Plaintiff's testimony that during the identification of the settlers within Ngerenyi Settlement Scheme, the deceased was the sole owner and occupant of the suit property. The same was allocated to him and the deceased commenced payment of the requisite charges to the Settlement Fund Trustees (SFT). He produced in this regard a number of receipts indicating that the deceased was making payments to the SFT for Plot No. 310 Ngerenyi as way back as 1973.

11. The Plaintiff told the court that his family had continued occupying the land after the death of the late Omar Charo. However sometime in May, 2017, the Defendant who had been occupying an adjacent parcel of land proceeded to fence off half of the suit property claiming to be the owner thereof. This prompted the Plaintiff to conduct a search at the Kilifi Land Registry upon which he came to find out that the Defendant had indeed been registered as the proprietor of the suit property way back on 29th August, 2006.

12. It was the Plaintiff's case that the Defendant was not in occupation of the suit property during the establishment of the Ngerenyi Settlement Scheme and his registration as the sole owner thereof must have been made through a mistake, an omission, a misrepresentation and/or fraud.

13. Despite filing a Memorandum of Appearance on 29th June, 2018, the Defendant did not file any response to the Plaintiff's claim. Neither did he participate in these proceedings. As a result there was no explanation from the Defendant on how he came to be the registered proprietor of the suit property.

14. From the material placed before me, it was evident that the deceased Omar Charo had been making payments to the settlement Fund Trustees in the 1970s for the suit property. It would have therefore been important for the Defendant to offer an explanation as to how he came to acquire the same.

15. In the circumstances herein, the Plaintiff's testimony and evidence before the court remains uncontroverted and this court did not find any reason to doubt the same.

16. Accordingly I am satisfied that the Plaintiff has proved his case on a balance of probabilities. Judgment is hence hereby entered for the Plaintiff as against the Defendant as prayed in the Plaint.

17. The Plaintiff shall also have the costs of this suit.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 22ND DAY OF NOVEMBER, 2019.

J.O. OLOLA

JUDGE