



**REPUBLIC OF KENYA**

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

**ELC CASE NO 588 OF 2014**

**JOSAM OPONYO ODINGO.....PLAINTIFF**

**VERSUS**

**JAMES ANALA R'RAJUAY.....DEFENDANT**

**JUDGEMENT**

At all times the plaintiff had a beneficial interest in all that parcel of land known as West Bunyore/Ekwanda/1580. On or about the year 2000 one Daina Angaya transferred the aforesaid parcel of land to herself without following the proper procedures laid down by law as the plaintiff's mother had died in 1992 and had not succeeded the plaintiff's mother. The said Daina Angaya (now deceased) was issued with a title deed and she subsequently in 2004 transferred the aforesaid parcel of land to the defendant herein without the consent of the plaintiff who has a beneficial interest in the land in question. On or about the year 2004 the defendant herein without any color of right encroached onto the aforesaid parcel of land and has interfered with the quiet possession of the plaintiff in respect to the said parcel of land. The defendant herein also fraudulently obtained title to the said parcel of land from one Diana Angaya who had fraudulently obtained title from his mother without succeeding her. The acts of commission and or omission by the defendant was null and void ab-initio and hence this claim. The plaintiff prays for judgement against the defendant for:

- a) The title known as West Bunyore/1580 and registered in the name James Anala R'Rajuay be and is hereby revoked back to one Peresh Masira.
- b) Costs in this suit.

The defendant stated that the plaintiff has no locus standi to bring this suit. The plaintiff has his father and mother. He has his own land and home distinct from the land subject matter herein and simply wants to disinherit Diana Angaya and her sisters because they are daughters. It is not the plaintiff's mother that died in the year 1992, but Diana Angaya's mother. The Luanda Land Disputes Tribunal heard the case and made a decision which was adopted at Vihiga Senior Principal Magistrate's Court (Miscellaneous Case No. 63 of 2002) no appeal was preferred. Consent of the plaintiff was not required. He has no beneficial interest in the land. He is a stranger to the family of Peris Masira and Diana Angaya and their property and/or inheritance. That plaintiff has never had quiet possession of the suit parcel. That no particulars of fraud have been pleaded. The defendant prays that the plaintiff's suit be dismissed with costs to the defendant.

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. West Bunyore/Ekwanda/1580. The plaintiff testified that, on or about the year 2000 one Daina Angaya transferred the aforesaid parcel of land to herself without following the proper procedures laid down by law as the plaintiff's mother had died in 1992 and had not succeeded the plaintiff's mother. The said Daina Angaya (now deceased) was issued with a title deed and she subsequently in 2004 transferred the aforesaid parcel of land to the defendant herein without the consent of the plaintiff who has a beneficial interest in the land in question. however, in cross examination he admits that Daina Angaya's mother is not his biological mother. He also admits that he does not live on the suit land. PW2 testified that the suit land is family land and belongs to the plaintiff's family. DWI testified that he bought the land from one Daina Angaya after following the legal transfer procedures. He is in occupation to date. That the said Daina Angaya obtained the title through a court order which was never appealed against. He produced the title deed, proceedings of the Luanda Disputes Tribunal, sale agreement, application for consent, letter of consent and transfer forms as exhibits. PW2 corroborated the defendant's testimony. She stated that Daina Angaya was her sister and the plaintiff her cousin. That Daina Angaya got the land from their mother Peris and sold it to the defendant. I find that the plaintiff does not reside on this land and has no beneficial interest. It is also in evidence that Daina Angaya obtained title through a court order which has not been challenged. The defendant is a bonafide purchaser for value and is in occupation of the suit land. The plaintiff pleaded fraud in his plaint and he did not state the particulars of fraud. He did not also prove the same. The defendant's title is indefeasible and can only be challenged if it is obtained by a fraudulent scheme which the plaintiff has failed to prove. I find the plaintiff has failed to prove his case on a balance of probabilities and I dismiss it with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 17<sup>TH</sup> DECEMBER 2019.**

**N.A. MATHEKA**

**JUDGE**