



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 387 OF 2013

ZABLON ADALO OGANGO.....PLAINTIFF

VERSUS

ALICE MUSIMBI.....1ST DEFENDANT

THE CHAIRMAN, LAND DISPUTES TRIBUNAL, KAPSABET.....2ND DEFENDANT

THE LANDS REGISTRAR, NANDI COUNTY.....3RD DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

JUDGMENT

Zablon Adalo Ogango, (hereinafter referred to as the plaintiff) has sued **Alice Musimbi, the Chairman Land Disputes Tribunal, Kapsabet, the Land Registrar, Nandi County and the Attorney General (hereinafter referred to as the defendants)**, claiming that on/about the 4.6.2008, the 1st defendant lodged a complaint to the 2nd defendant claiming Plot No. 51 whereas the plaintiff was never served. The Tribunal decided that the 1st defendant be given 1 acre from Nandi/Kapkangani/1466, yet the claim by the 1st defendant was of Plot No. 51. The plaintiff claims that at the time of the said decision, the 3rd defendant had already issued a title deed to the plaintiff.

The plaintiff precisely states that on or about 22.1.2009, the decision or the award given by the Chairman of Kapsabet Land Dispute Tribunal was adopted as a judgment of the court. According to the plaintiff, the Land Dispute Tribunal had no jurisdiction to hear and determine dispute over the plaintiff's land Nandi/Kapkangani/1466 because the plaintiff had not been sued or any claim against him registered or filed at said Tribunal and that the plaintiff was not even a party to the proceedings in LDT No. 35 of 2008 at Kapsabet Court. The Tribunal awarded 1 acre of plaintiff's land Nandi/Kapkangani/1466. The District Lands Registrar had proceeded to issue another Title Deed to 1st defendant on 20.7.2009 which was later cancelled. The Lands Registrar had no jurisdiction to issue title Deed to the 1st defendant Alice Musimbi when in fact the plaintiff is not a party to the Decree dated 18.3.2009 or the proceedings at the Kapsabet Lands Dispute Tribunal.

The plaintiff further states that the title deed issued by the District Lands Registrar on 14th June, 2013 is equally illegal as there is no court order to that effect. The Decree dated 16th April, 2009 does not even refer to the plaintiff's land and the plaintiff is not even a party to the proceedings.

The plaintiff prays for a declaration that the award and decree dated 18.3.2009 issued by Tribunal and adopted by court on 22.1.2009 in favour of the defendant, Alice Musimbi is a null and void and that the Title Deed issued to Alice Musimbi by Lands Registrar on 14.6.2013 be recalled and cancelled and the Land Registrar, Nandi be ordered to restore Title Deed in respect of land parcel Nandi/Kapkangani/1466 to the plaintiff Zablon Adalo Ogango. That the 1st defendant Alice Musimbi be permanently restrained from claiming ownership, entering, selling, charging, transferring or in any manner dealing with plaintiff land parcel Nandi/Kapkangani/1466.

The 1st defendant filed statement of defence and counterclaim denying that the 2nd defendant is properly before court as the Tribunal is no longer in existence by operation of the law. The 1st defendant admitted that she lodged a complaint with the Kapsabet Division Land Disputes Tribunal over the parcel which subsequently became Nandi/Kapkangani/Kaimosi/1466 and not Nandi/Kapkangani/1466. The 1st defendant avers that the sub-division and registration of the plaintiff as the proprietor of Nandi/Kapkangani/Kaimosi/1466 was illegal and fraudulent specifically geared towards denying the 1st defendant the benefits of the Decree in Kapsabet Principal Magistrate's Court LDT No. 35 of 2008.

Particulars of fraud as alleged against the plaintiff and the 3rd defendant are that they altered the particulars and entries of parcel of the original Nandi/Kapkangani/Kaimosi/51 without the knowledge and authority from court and caused the 1st defendant's title deed, legally and properly issued by the 3rd defendant, to be withheld through fraud, deceit and collusion with the plaintiff and disobeyed lawful court

orders with intent to defraud the 1st defendant and criminally abused office, authority and power vested by law and knowingly undermined law and order with intent to subvert the course of justice. The 1st defendant states further that the 3rd defendant in concert and in conjunction with the plaintiff has deprived the 1st defendant her property namely parcel Nandi/Kapkangani/Kaimosi/1466. The 1st defendant states that the complaint lodged before the Tribunal was proper and within the law and it is not within the 1st defendant's knowledge that the claim was oral.

The 1st defendant states that there was a sub-division of parcel Nandi/Kapkangani/Kaimosi/51 hence parcel Nandi/Kapkangani/Kaimosi/1466 since the 1st defendant had been awarded only the said 1.0 acres. The 1st defendant admits that she was issued with a title deed over a portion of 1.0 acres only out of that parcel Nandi/Kapkangani/Kaimosi/51 but denies that she was issued with a title deed prior to the actual decision of the Tribunal. The 1st defendant further admits the adoption of the Award.

The 1st defendant clearly and unequivocally states that the Tribunal had jurisdiction to hear and determine the dispute and adds that her claim was clear and unequivocal where one Stephen Yego and Samwel Endeje were the defendants while the present plaintiff caused himself to be registered through fraud, deceit and unorthodox means way after the claim had been lodged before the Tribunal and filed in Court and a decree issued for the 1 acre. The 1st defendant further adds that the plaintiff conspired with the 3rd defendant to cause the said plaintiff to be registered as the proprietor of the suit land after she was misled that the title deed that had been issued to her had errors needing correction.

The 1st defendant states that the plaintiff brought himself into the claim of the 1st defendant over the then parcel Nandi/Kapkangani/Kaimosi/51 and now Nandi/Kapkangani/Kaimosi/1466. The 1st defendant denies that her title over 1.0 acres of Nandi/Kapkangani/Kaimosi/1466 was cancelled and invites the plaintiff to strict proof.

The 1st defendant further avers that the Land Registrar, the 3rd defendant was bound by law and the court's order after the Decree of the court was registered and the appeal by way of review aborted and that the title deed issued on the 14th of June, 2013 was legal and above board.

The 1st defendant admits that there has been Eldoret High Court Judicial Review No. 32 of 2009 but denies that it was overtaken by events and states that the application was incurably and fatally defective and was abandoned by the plaintiff leading to the restoration of the Decree, the subject matter of the application for Review and the later title deed. The 1st defendant states that the present suit is an abuse of the court process, manipulative and deceptive as the suit is merely intended to deprive the 1st defendant of her land and therefore not entitled to the orders prayed for.

The 1st defendant states that she is not and has never been the registered proprietor of that parcel known as Nandi/Kapkangani/1466 and shall seek the striking out of the suit with costs at the earliest opportunity.

On counterclaim, the 1st defendant repeats and asserts all the contents of her defence and avers that the 3rd defendant has no powers and or authority to vary and or negate the 1st defendant's title deed issued pursuant to execution of a court order which has not been appealed against and or set aside by way of Review by the 4th defendant. The 1st defendant states that she is the registered owner of parcel Nandi/Kapkangani/Kaimosi/1466 and counterclaims against the plaintiff averring that the plaintiff is not entitled being on the land and should quit and deliver vacant possession and occupation.

The 1st defendant's claim against the plaintiff is for an order of Eviction against the said plaintiff whether by himself or through his agents, servants, nominees and or personal and/or legal representatives from the 1st defendant's parcel Nandi/Kapkangani/Kaimosi/1466.

The 1st defendant further prays that the plaintiff be restrained by way of a permanent injunction from moving back into the said parcel Nandi/Kapkangani/Kaimosi/1466 on granting the prayer of eviction above. Reasons wherefore, the defendant prays that the plaintiff's claim be dismissed and the counterclaim be allowed.

When the matter came for hearing, the plaintiff testified that he bought land parcel Nandi/Kapkangani/1466 from the original owner Stephen Yego on 11th April, 1986. He paid Kshs.15,000/= in full. The original Plot was No. 51 and he has a copy of Sale Agreement which he produced as evidence before this court. That he acquired the title deed from the Government on 27.7.2007. That later, Alice Musembi lodged a false claim against his land at Kapsabet Division Lands Disputes Tribunal. That he was never served with any claim or proceedings by the Lands Disputes Tribunal. That he was never invited to attend the hearing at the Tribunal. That the proceedings at the Tribunal shows that he was never a party to these proceedings but the Tribunal proceeded to award 1 acre of his land to Alice Musimbi.

That the proceedings at the Tribunal was in respect of Plot No. 51 but the same was later changed to read his title. That he complained to the Registrar at Kapsabet who had initially issued a Title Deed to Alice Musimbi. That the District Registrar wrote a letter recalling the title deed which he cancelled it in his presence. He produced in court as an exhibit a letter cancelling the title earlier issued to Alice Musimbi and produced a copy of a title deed which was issued to him. He produced a copy of green card showing that Title issued to Alice Musimbi was issued erroneously and was cancelled. The second title issued by the Lands Registrar has no legal basis because the Decree of Kapsabet Land Disputes Tribunal No. 35 of 2009 had been quashed and that he has therefore filed suit for cancellation of title deed issued to Alice Musimbi on 14.6.2013.

The defendant on his part gave evidence that sometimes back, her father bought a parcel of land from James Kiplagat Tuwei measuring 4.0 acres and later on he moved out of the matrimonial home and he sold 3.0 acres living 1.0 acres to her when she was still young. That due to their innocence, one Stephen Yego who was their neighbor took advantage and sold that Land to Zablon Adolo Agnago who is claiming that he bought the land from Stephen Yego. When she realized that the land had been sold, she went to Council of Elders to request the whereabouts to her father's title deed and they told her that the owner of the land is the plaintiff herein in this case, Zablon Adolo Agango and that Mr. Stephen Yego had sold that land to him and by then, a house had been constructed by the plaintiff.

The plaintiff was summoned by the Council of Elders in which he was asked whom did he bought the land from. He told the panel that he purchased the land from one Stephen Yego, insisting that he did not know her and her father. She proceeded to Assistant Chief's offices in which the plaintiff was asked the same questions he again insisted that he is the owner of the land because he bought the said land from Stephen Yego measuring 1.0 acres.

That she proceeded to the Land Tribunal where the two Samwel Ndeche and plaintiff were summoned but Ndeche attended and the plaintiff in this case did not attend after several requests and demands by Land Tribunal and in that process, Samwel Ndeche became sick and died. That she proceeded to court in which she was awarded a Decree to have a title in her names in the Lands Registry of which the same was done issuing her a title in her names and title No. Nandi/Kapkangani/Kaimosi/1466, 1.0 acres.

Later on, when two months had elapsed, she was called by the District Land Registrar to return the same title lying to her that some rectifications were ought to be made by him. When she arrived at the same office, she handed over a photocopy of the Title Deed to him and he insisted that he wanted to have the original Title Deed and she did the same by handing over to him and he told her to wait outside his office. After a while, due to darkness which was approaching night hours, the Land Registrar came out of the office and told her that he could no longer return the same title deed to her and that she could take her anywhere she wanted. She proceeded to the District Officer's offices and reported the same matter and she was told to proceed to court in which she did the same by opening a file in the Kapsabet Principal Magistrate's Court and she was told the case was to be heard in the High Court at Eldoret and the Decree was awarded to her stating that she is the owner of Nandi/Kapkangani/Kaimosi/1466, 1.0 acres.

The plaintiff submits that there is no basis upon which the Land registrar issued another title to the 1st defendant on 14.6.2013. That there are two title deeds issued to the plaintiff and 1st defendant in respect of the same parcel of land. The plaintiff was issued the title deed on 27.7.2007 whereas, the defendant was issued on 14.6.2013. According to the plaintiff, the title is illegal and has no legal basis. The plaintiff argues that the complaint before the Tribunal was proper and within the law. That there was subdivision of parcel of land No. Nandi/Kapkangani/1466 since the 1st defendant was only awarded 1.0 acres.

I have considered the pleadings, evidence on record and the parties' submissions and do find that the proceedings in LDT No. 35 of 2008 revolved on Nandi/Kaimosi/51 and not Nandi/Kapkangani/Kaimosi/1466. Proceedings in Kapsabet Land Disputes Tribunal No. 35 of 2008 did not involve the plaintiff as he was not a party. The Kapsabet Land Disputes Tribunal did not make any decision in respect of Nandi/Kapkangani/Kaimosi/1466. I do find that the decision by the 3rd defendant to register land No. 1466 in the name of the 1st defendant was not with any legal basis as the Tribunal did not make any decision in respect of Nandi/Kapkangani/Kaimosi/1466.

I do find that the 1st defendant was issued with title deed in respect of 1466 illegally and therefore, I do grant a declaration that the award and decree dated 18.3.2009 issued by Tribunal and adopted by court on 22.1.2009 in favour of the defendant, Alice Musimbi was not in respect of the suit land and that the Title Deed issued to Alice Musimbi by Lands Registrar on 14.6.2013 in execution of the Kapsabet Land Disputes Tribunal award is a nullity the same is hereby recalled and cancelled and the Land Registrar, Nandi is hereby ordered to restore Title Deed in respect of land parcel Nandi/Kapkangani/1466 to the plaintiff Zablon Adalo Ogango. No order as to costs as the cause of action was based on errors by the defunct Land Disputes Tribunal. Orders accordingly.

Dated and delivered at Eldoret this 25th day of January, 2018.

A. OMBWAYO

JUDGE