



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO.662 of 2015

[FORMERLY HIGH COURT CIVIL CASE NO.116 OF 2011]

**TOM OKELLO NYAIDHO (Suing as the personal  
representative and the administrator**

**Ad litem of the estate BLASIO**

**NYAIDHO OUKO (DECEASED.....PLAINTIFF**

**VERSUS**

**HELIDA ONGONGA OLEWE.....1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENMERA(SUED ON BEHALF OF**

**THE DISTRICT LAND REGISTRAR KISUMU).....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**1. Tom Okello Nyadhho** [suing as the personal representative and admisntrator ad litem of the estate of **Blasio Nyaidho Ouko** (Deceased), the Plaintiff, filed the suit against **Helida Ongonga Olewe and The Attorney General** (sued on behalf of the District Land Registrar, Kisumu, the 1<sup>st</sup> and 2<sup>nd</sup> Defendant respectively, seeking for the following prayers;

**“a) A declaration that the registration of the 1<sup>st</sup> Defendant’s name on land parcel No. Kisumu/Ojola/2097 was fraudulent and illegal ab inItio as the 1<sup>st</sup> Defendant had no legal capacity to be registered as so. An order compelling the 2<sup>nd</sup> Defendant to rectify the register so that land parcel No. Kisumu/Ojola/2097 revert to the name of Blasio Nyaidho Ouko, the deceased herein.**

**b) An eviction from land parcel No.Kisumu/Ojola/2097. An order for a permanent injunction restraining the the 1<sup>st</sup> Defendant either by herself, servants, agents, family members, or employees from claiming, entering, occupying, cultivating or in any other manner interfering with the Plaintiff’s and other beneficiaries right to quiet possession and enjoyment of land parcel No. Kisumu/Ojola/2097.**

**c) Costs of the suit and interest thereon.**

**d) Any other relief that this honorable court will deem fit and just to grant.”**

**2. That the Plaintiff avers as follows;**

- That the suit land was registered on 21<sup>st</sup> July 1978 in the name of his father, the deceased, on the first registration. That the deceased passed on the 17<sup>th</sup> June 1980 leaving a widow and the three named children.
- That on the 24<sup>th</sup> October 2008, the 2<sup>nd</sup> Defendant registered the 1<sup>st</sup> Defendant as the owner of the land fraudulently and

without the consent of the Plaintiff and that of the other beneficial owners.

- That the 1<sup>st</sup> Defendant then took possession of the land and has been using it, denying the Plaintiff and the other beneficial owners their rights.
- That the registration of the 1<sup>st</sup> Defendant as proprietor of the land only came to be known by the Plaintiff on the 6<sup>th</sup> April 2011 when he carried out a search at the land's office with a view to taking out letters of administration in respect of his late father's estate.

3. The 1<sup>st</sup> Defendant entered appearance through a memorandum dated and filed on the 22<sup>nd</sup> August 2011 but did not file a statement of defence.

4. The 2<sup>nd</sup> Defendant opposed the Plaintiff's claim through the statement of defence dated 2<sup>nd</sup> September 2011. The 2<sup>nd</sup> Defendant denies to having fraudulently caused the suit land to be registered in the 1<sup>st</sup> Defendant's name. They further aver that the actions taken by the Land Registrar regarding the suit land was lawful, procedural, regular and legal.

5. The suit came up for hearing on the 27<sup>th</sup> November 2017 with the Plaintiff and 2<sup>nd</sup> Defendant represented by Mr. Ken Omollo and Mr. Kiu Advocates, respectively. The 1<sup>st</sup> Defendant though served with a hearing notice, as confirmed through the affidavit of service by Julius Otieno Raminya filed in court on the 27<sup>th</sup> August 2017, did not attend court.

6. The Plaintiff testified as PW1 and produced a copy of certificate of death No.169662 showing that **Blasio Nyaidho Ouko** died on the 17<sup>th</sup> June 1980. He also produced a copy of green card (register) for parcel No. **Kisumu/Ojola/2097** confirming that it was first registered on the 21<sup>st</sup> July 1978 in the name of **Blasio Nyaidho**. The green card further shows under entry No.2 of 24<sup>th</sup> October 2008 that the land was registered in the name of **Helida Ongonga Olewe**, the 1<sup>st</sup> Defendant, of identity card No. 4700655 and title deed issued on the same date. The witness also produced a letter dated 30<sup>th</sup> March 2011 from the chief to the Land Registrar, introducing the Plaintiff as the one the family had agreed to inherit the suit land. PW1 further produced a copy of the certificate of official search on the suit land dated 6<sup>th</sup> April 2011 confirming the details in the green card referred to earlier. The witness testified that the 1<sup>st</sup> Defendant came onto the land in 2011 and that after the land Registrar failed to give him, documents used in registering her as proprietor like the land control board consent and succession papers, he filed this suit after issuing appropriate demand notices.

7. The following are the issues for the court's determinations;

- a. Whether the suit land was in the name of Blasio Nyaidho Ouko (deceased) by the time he died on the 17<sup>th</sup> June 1980.
- b. Whether the registration of the 1<sup>st</sup> Defendant as the proprietor of the suit land on the 24<sup>th</sup> October 2008, and the issuance of title deed in her name was procedurally, irregularly and legally done.
- c. Whether the 1<sup>st</sup> Defendant's registration as proprietor of the suit land was with collusion of the Land Registrar (2<sup>nd</sup> Defendant).
- d. Which of the orders (prayers) sought should issue.
- e. Who pays the costs.

8. The court has carefully considered the pleadings filed by the Plaintiff and 2<sup>nd</sup> Defendant, oral and documentary evidence presented by the Plaintiff and come to the following findings;

- a. That land parcel **Kisumu/Ojola/2097** was first registered on the 21<sup>st</sup> July 1978 in the name of **Blasio Nyaidho**, who the Plaintiff claimed was his late father, also known as **Blasio Nyaidho Ouko**.
- b. That as evinced by the certificate of death No.169662 dated the 19<sup>th</sup> March 1987, the said Blasio Nyaidho Ouko passed on the 17<sup>th</sup> June 1980 and by then the land was still in his name as confirmed by the copy of the green card.
- c. That ownership or proprietorship of the land changed on the 24<sup>th</sup> October 2008 when the person named Helida Ongonga Olewe, became the registered proprietor. That person is the 1<sup>st</sup> Defendant in this suit and did not file a statement of defence to the claim nor come to cross examine the Plaintiff. That the green card does not show any value at the column of "**Consideration and Remarks**."

That it is also not shown whether she got registered with the land through transmission, gift or transfer. That it is important to note that the transaction took place about twenty eight (28) years after the death of the previous registered owner, thereby ruling out a transfer as the basis of the registration. That even if a transfer did take place, there is no evidence that land Control board consent was applied for and obtained as required under **Sections 6 and 8 of Land Control Act chapter 302 of Laws of Kenya**.

d. That as the transaction leading to the 1<sup>st</sup> Defendant being the registered proprietor of the suit land took place about 28 years after the death of the previous owner, there was the requirement that a confirmed grant be obtained in accordance with **Section 45 and 71 of the Laws of Succession Act Chapter 160 of Laws of Kenya**. That according to the Plaintiff, the family of his late father was not aware of the

transaction nor had they consented to the 1<sup>st</sup> Defendant acquiring proprietorship of the suit land. That the Plaintiff testimony that the Land Registrar did not avail to him the copies of the documents on which the registration of the 1<sup>st</sup> Defendant was based on was confirmed, albeit from the bar, by counsel for the 2<sup>nd</sup> Defendant on the 29<sup>th</sup> November 2016 and 27<sup>th</sup> November 2017. That the counsel stated that they did not have such documents and therefore supported the Plaintiff's claim. That thereafter, the 2<sup>nd</sup> Defendant closed their case without calling any oral evidence

e. That the fact that the 2<sup>nd</sup> Defendant failed to avail the source documents, like the transfers document, grant issued by a succession court and land control board consent, on which they based entry No.2 conferring ownership of the land to the 1<sup>st</sup> Defendant leads the court to agree with the Plaintiff that the Land Registrar colluded with the 1<sup>st</sup> Defendant in fraudulently, irregularly, illegally and unprocedurally registering the land in the name of the 1<sup>st</sup> Defendant. That when confronted with this suit the 2<sup>nd</sup> Defendant opted to deny the claim instead of joining the Plaintiff to undo the injustice and hence should be condemned to costs.

f. That the transactions leading to the registration of the suit land in the name of the 1<sup>st</sup> Defendant must have been with her active participation. That the 1<sup>st</sup> Defendant **must** obviously have known she was not entitled to inherit the land as the Plaintiff testified that she is not related to the deceased or his family. That 1<sup>st</sup> Defendant must have also known the transaction was fraudulent as no land control board consent, or confirmed grant in her favour had been procedurally and regularly obtained. That the 1<sup>st</sup> Defendant registration of the land parcel **Kisumu/Ojola/2097** did not confer good title to her. That the title is therefore impugned under the provisions of **Section 26 of Land Registration Act No.3 of 2012**.

9. That flowing from the foregoing, the court finds that the Plaintiff has proved his claim against both Defendants in accordance with the law on a balance of probability. The court therefore enters judgment for the Plaintiff against the Defendants in the following terms:

a. That a declaration is hereby issued that the registration of land parcel **Kisumu/Ojola/2097** under entry No.2 in the name of the 1<sup>st</sup> Defendant was done fraudulently, irregularly, illegally and unprocedurally and is therefore null and void ab initio.

b. That the 2<sup>nd</sup> Defendant [Land Registrar] is hereby ordered to on receipt of a copy of this order, to rectify the register of land parcel Kisumu/Ojola/2097 by cancelling the name of the 1<sup>st</sup> Defendant on entry No.2, recalling and cancelling the title deed issued in her name under entry No.3, and thereby revert the proprietorship and registration of the said land in the name appearing on entry No.1 of 21<sup>st</sup> July 1978.

c. That the 1<sup>st</sup> Defendant is hereby ordered to vacate from land parcel Kisumu/Ojola/2097 and give vacant possession to the Plaintiff, who holds the Limited grant of Letters of Administration ad Litem, in the estate of **Blasio Nyaidho Ouko**, deceased, in ninety (90) days and in default eviction order to issue to be executed in accordance with the law.

d. That upon 1<sup>st</sup> Defendant giving vacant possession or being evicted, the court orders that she be permanently enjoined by herself, servants, agents, family members or employees from entering, occupying, cultivating or in any other manner, interfering with the Plaintiff's and other entitled beneficiaries right to quiet possession and enjoyment of land parcel Kisumu/Ojola/2097.

e. The Defendants pay the Plaintiff costs of this suit.

Orders accordingly.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 28<sup>TH</sup> DAY OF FEBRUARY 2018**

In presence of;

Plaintiff            Absent

Defendants           Absent

Counsel            Mr. Ogonda for Ken Omollo for Plaintiff

M/S Esadi for 2<sup>nd</sup> Defendant

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**28/2/2018**

28/2/2018

S.M. Kibunja Judge

**Joane court assistant**

Parties absent

Mr. Ogonda for Ken Omollo for Plaintiff

M/S Exendi for 2<sup>nd</sup> Defendant

Court: The judgment dated and delivered in open court in the presence of Mr. Ogonda for Ken Omollo for the Plaintiff and M/S Esendi for the 2<sup>nd</sup> Defendant.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

28/2/2018

**Order: The file be closed.**

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

28/2/2018