



REPUBLIC OF KENYA.

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA.

ELC CASE NO. 67 OF 2008.

JAFETH MAKOKHA.....PLAINTIFF

VERSUS.

SIMON WAFULA MANG'OLI.....DEFENDANT

JUDGMENT.

[1]. By an Originating Summons dated 24/11/2008 the applicant herein prayed for orders, firstly, that a declaration be made that the registration of Simon Wafula Mang'oli as owner of land parcel Ndivisi/Muchi/1602 was done by fraud and ought to be cancelled. Secondly, that the land Registrar Bungoma be ordered to register the applicant, Jafeth Makokha Simiyu as the owner of Land Parcel No. Ndivisi/Muchi/602 and thirdly, the costs of the suit.

[2]. In support of his originating summons, the applicant stated that he entered into an agreement with the 1st defendant and one Kimutai Kemboi on 29/1/87 for the purchase of Ndivisi/Muchi/1602. The purchase price was agreed at Kshs.35,000/= which was duly paid in cash. That the applicant took possession, entered therein and built houses and resided therein. He avers, that after taking possession the sellers disappeared forcing him to put a caution of the land on 18th November, 2008. He avers he has been on the land for a period of in excess of 12 years a period that is adverse to the title holders.

[3]. That later Kimutai Kemboi died and to the best of his knowledge, no letters to administer his estate has been taken by anyone. The applicant states, that unknown to him, on 5/10/2007 the suit land was transferred to Simon Wafula Mang'oli. The applicant argues that by the time the land was being transferred to Simon Wafula Mang'oli aforesaid, he had been on the land for 12 years and the rights of the registered owner John Koros and Kimutai Kemboi had been extinguished by operation of law. That therefore the registration of Simon Wafula Mang'oli was fraudulent as no Succession of Kimutai Keboi had been done and that caution on the suit land by the applicant had been removed without any notice to him.

[4]. The first respondent filed a replying affidavit. He stated that he was issued with a title deed of the suit land on 11/1/2008. That the same was sold to him by the original owners John Koros and Kimutai Kemboi for Kshs.190,000/= and a consent of the land Control Board was obtained on 15/3/2007 and a transfer form signed on 11th June, 2007.

He argued, that the transfer documents were signed before the death of Kimutai Keboi and that therefore a Succession proceeding was not necessary.

[5]. The Land Registrar Bungoma Lands office wrote a notice of removal of caution on 7/2/2007. He referred to his earlier notice dated 25/10/2006 and a reminder of 26/11/2006, he warned that he would remove the caution within 30 days of his letter of 7/2/2007 if no objection was received in his office. The letter was copied John Koros and Kimutai Kemboi of P. O. Box 1675 Nakuru. This was a letter posted in the ordinary way. It was not registered or sent under certificate of posting.

[6]. The issue for determination is whether the applicant herein has established a case of adverse possession on the suit land against the registered owner Simon Wafula Wamang'oli.

[7]. The applicant entered into an agreement for sale of the suit land on 29.1.1987. He paid the full purchase price of Kshs.35,000/= on the same date and took possession. He built his dwelling place therein and has been in occupation till now. This was an agricultural land. It was subject to land Control. Indeed, that is why the 2nd respondent obtained one on 15.03.2007 when he attempted to sell the same to the 1st respondent. That sale to the applicant plaintiff became void after Six (6) months of 29/1/87. For the avoidance of doubt the sale of the suit land to the applicant became void on 29/7/87 for lack of land control consent aforesaid and by operation of law. Time then started to run against the registered owners. It so ran until 29th of July, 1999. That is when the 12 years elapsed.

[8]. The 1st applicant Simon Wafula Mang'oli entered into an agreement to purchase the suit land on 19th September, 1991. This agreement for sale was purportedly made between John Koros and Kimutai Kemboi and Simon Wafula Mang'oli. Purchase price was Kshs. 190,000/=.

This agreement was however signed by Koros alone on 19th September, 1991. Kimutai Kemboi did not sign the said agreement which was made before Nancy Baraza Advocate. It is pursuant to this sale that the consent of the Land Control Board's consent of 15.03.2007 was granted. This is borne out of the application for land Control Board forms dated 15th February 2007 signed by John Koros alone. The co-owner Kimutai Kemboi did not sign those forms.

[9]. The Transfer Form for the suit land has the names of the two owners John Koros ID/No.3623613 and Kimutai Kemboi whose identity card numbers are not indicated and John Wafula Mang'oli ID/No.3336706 of P. O. Box 774 Webuye. The same is executed by John Koros ID. 3623613 P.I.N. number A003182237E. There is no execution by the co-owner Kimutai Kemboi. In spite of all those documents not having been executed by Kimutai Kemboi a title deed was issued on the 11th January, 2008 in the name of Simon Wafula Wamang'oli.

[10]. The title Ndivisi/Muchi/1602 was registered on 4th November, 1976 in the names of John Koros and Kimutai Kemboi as absolute proprietors. This land could not at all be transferred by one person to Simon Wafula Wamangoli. Kimutai Kemboi never signed the agreement for sale of the same and he never applied for land Control as an owner, he never signed the transfer of the same to Simon Wafula Wamangoli. This sale does not comply with the requirement of the law. This sale is fraudulent and void. There is absolutely no explanation why Kimutai Kemboi never took part. There is equally no indication that he sold his undivided share to Simon Wafula Mang'oli.

[11]. It is very strange that the Bungoma District land Registrar did not notice all these glaring omissions. How could a transfer signed by one person on a piece of land jointly registered and owned be accepted in the land office to transmit title? The subsequent transfer effected in the land office Bungoma by John Koros in respect of this title is set aside. The transfer was illegal and void. The land shall revert to John Koros and Kimutai Kemboi as earlier registered.

[12]. The applicant has been in the suit land since purchase. On 29th July 1999 the 12 years expired. He had not been served with any notice by the registered owners John Koros and Kimutai Kemboi to move and vacate out of the suit land. His occupation therein had been uninterrupted. He has completely dispossessed the registered owners of ownership with his occupation of the suit land. His occupation has been quiet peaceful and without force. He has occupied the whole of the suit land.

[13]. I grant the applicant the orders he seeks in his Originating Summons dated 24th November, 2008. He shall be registered as the owner of Ndivisi/Muchi/1602. The County District Land Registrar Bungoma is ordered to forthwith register him as the owner of the said Land. He shall also have the costs of the suit.

Judgment read in open Court before Mr. Mukhele.

Dated at Bungoma this 22nd day of February, 2018.

S. MUKUNYA

JUDGE

In the presence of:

Joy: Court Assistant

Mr. Mukhele for Plaintiff

Defendant In Person – Absent