



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 48 OF 2014**

**CHRISTOPHER ALUDA KEYA.....PLAINTIFF**

**VERSUS**

**THE DISTRICT LAND REGISTRAR, MBALE.....DEFENDANT**

**JUDGEMENT**

At all material time the plaintiff has been registered owner of land parcel number South Maragoli/Buyonga/1589. On or about the 20<sup>th</sup> October, 2013 the plaintiff on doing a search and applying for a Green Card at the Mbale Land Registry realized that the District Lands Registry had subdivided land parcel number South Maragoli/Buyonga/1589. That land parcel number South Maragoli/Buyonga/1589 had been sub-divided and it produced two numbers that is South Maragoli/Buyonga/2035 and South Maragoli/Buyonga/2036 and land parcel number South Maragoli/Buyonga/2036 had been registered in the name of Moses Kitagwa Aloo deceased on 3<sup>rd</sup> May, 2006.

The plaintiff testified that, the said act of the registrar amounts to fraud. And the particulars are falsifying documents and subdividing the plaintiff's land parcel South Maragoli/Buyonga/1589 without plaintiff consent. Subdividing South Maragoli/Buyonga/1589 into two parcels and registering one number in the name of a deceased person. Registering land parcel number South Maragoli/Buyonga/2036 in the name of a phantom (dead) person who has never been seen or known in the area. As a result of the defendant fraudulent acts the plaintiff has suffered loss and damage. The plaintiff prays that judgment be entered for it against the defendant for:-

- (a) A declaration that the transfer in favour of Moses Kitagwa Aloo deceased was illegal and irregular.
- (b) That the subdivision done by the District land Registrar be nullified and the original number South Maragoli/Buyonga/1589 be restored in name of the plaintiff.
- (c) Any other or further orders this court may deem just and expedient for grant.

The defendant testified that, he is the District Land Registrar, Vihiga County. That on 7<sup>th</sup> March, 1995 the plaintiff was registered as land owner of land parcel No. South Maragoli/Buyonga/1589 and issued title Deed on 10<sup>th</sup> March, 1995. That on 25<sup>th</sup> March, 2002 the Senior Resident Magistrate Vihiga issued a decree in Vihiga Misc. application No. 64 of 2001 whose parties were Moses Kitagwa Aloo as the applicant and Epainitus Fundi Kilasi as the respondent and which it ordered that the land be sub-divided and a portion be transferred to the applicant (Moses Kitagwa Aloo) which they brought in the Land Parcel South Maragoli/Buyonga/2036. The Misc. Application No. 64 of 2001 was an adoption of Vihiga Land dispute Tribunal Case No. LD/C/26/2001. That the court ordered that the Executive Officer in charge of Vihiga Court to sign all the relevant documents on behalf of the registered land owner. That on 3<sup>rd</sup> May, 2006 the said Moses Kitagwa Aloo was registered as owner of Land Parcel No. South Maragoli/Buyonga/2036. That their office which he is in charge did not in any way fraudulently register the said Moses Kitagwa Aloo as the owner of the suit parcel of land but they only implemented the decree and orders of the court. That while they were implementing the decree and orders of the court all transactions passed through the Vihiga Land Control Board for the relevant consent, sub-division and transfer.

This court has carefully considered both the plaintiff's and the defendant's evidence and the submissions therein. It is not disputed that, the plaintiff was registered as land owner of land parcel No. South Maragoli/Buyonga/1589 and issued title Deed on 10<sup>th</sup> March, 1995. That on 25<sup>th</sup> March, 2002 the Senior Resident Magistrate Vihiga issued a decree in Vihiga Misc. application No. 64 of 2001 whose parties were Moses Kitagwa Aloo as the applicant and Epainitus Fundi Kilasi as the respondent and which it ordered that the land be sub-divided and a portion be transferred to the applicant (Moses Kitagwa Aloo) which they brought in the Land Parcel South Maragoli/Buyonga/2036. The Misc. Application No. 64 of 2001 was an adoption of Vihiga Land dispute Tribunal Case No. LD/C/26/2001. That the court ordered that the Executive Officer in charge of Vihiga Court to sign all the relevant documents on behalf of the registered land owner. That on 3<sup>rd</sup> May, 2006 the said Moses Kitagwa Aloo was registered as owner of Land Parcel No. South Maragoli/Buyonga/2036. The defendant in submission stated that there was a clerical error and the wrong parcel of land was subdivided. I find that the defendant was acting on the orders of the court and they was no fraud at all. The plaintiff if aggrieved by the court decree ought to have pursued that matter in that suit and not file a fresh suit alleging fraud. This suit is misconceived and lacks merit. I find that 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 19<sup>TH</sup> DAY OF SEPTEMBER 2018.**

**N.A. MATHEKA**

**JUDGE**