



Onduso (Suing as the Personal Representative of the Estate of Maeri Onduso, Deceased) v Karani (Environment & Land Case 443 of 2017) [2018] KEELC 4882 (KLR) (24 October 2018) (Judgment)

Neutral citation: [2018] KEELC 4882 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 443 OF 2017
MN KULLOW, J
OCTOBER 24, 2018**

BETWEEN

FLORENCE GESARE ONDUSO (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF MAERI ONDUSO, DECEASED) PLAINTIFF

AND

MARGARET SELELO KARANI DEFENDANT

JUDGMENT

1. The Plaintiff brought his suit against the defendant by way of a Plaint dated June 12, 2013 and Amended on July 12, 2015; seeking the following reliefs: -
 - i. An Order of Revocation of the illegally acquired title Transmara/ Moyoi/ 91 and restoration of the original title Transmara/ Moyoi/91 belonging to Maeri Onduso.
 - ii. An Order of eviction of the Defendant, his agents and/or servants from Land Parcel No Transmara/ Moyoi/ 91.
 - iii. A Permanent Injunction restraining the Defendant from trespassing, disposing off and interfering with Land Parcel No Transmara/ Moyoi/91.
 - iv. Costs of the suit.
2. In the Amended Plaint, the Plaintiff averred that she is suing as the Personal Representative of the Estate of the Late Maeri Onduso and the Defendant as the representative of the estate of her late husband John Salelo. The Plaintiff testified and called one witness and in her testimony she stated that her late husband had acquired the suit land through the Land Adjudication process and his name duly registered in the Adjudication record in the year 1977.



3. She further stated that they had occupied and tilled the land until 1991 when inter-tribal clashes made them vacate the suit property for their own safety. When she returned she found the land had been possessed, occupied and registered in the name of the Defendant and on checking at the Lands Registry, she was informed that the Defendant's husband had registered an objection against the Adjudication and consequently the land was registered in the name of the Defendant's husband.
4. On cross-examination, she stated that neither her nor her husband were aware of any objection lodged against the Adjudication Process and how the property was registered in the name of the Defendant's husband.
5. The Plaintiff's witness was Abuga Onkundi (PW2) who testified that the Plaintiff's husband was his neighbor and had acquired the suit land through the adjudication process. He stated that he is the owner of the Land Parcel No Transmara/ Moyoi/92 and that they were forcefully evicted from their lands in the year 1988 and 1991.
6. The Defendant had filed a Statement of Defence and it is her case that her late husband had acquired the suit property vide Objection Number 240 of 1991, where the Plaintiff's husband name was cancelled in the Adjudication Record and replaced by that of her husband, following the lodging of a successful Objection. She objected to the allegations of fraud by her husband as he was not an employee of the Ministry of Lands.
7. The Defendant in her Defence contended that the suit herein was barred by the provisions of Section 25, 26 and 29 of the *Land Adjudication Act* and section 4 of the *Limitation of Actions Act*.
8. She called Francis Muiruri (DW2) who is the Land Adjudication Officer- Transmara. He stated that he entered the name of the Defendant's husband after hearing of the objection proceedings. He confirmed that his records showed that the objection lodged by the Defendant's husband was allowed and thus the cancellation of Maeri Onduso's name as the owner.
9. During cross-examination, he stated that if a person is not satisfied with an Adjudication record he can file an objection and when the same is allowed a letter of finality is issued.
10. I have considered the parties' respective cases as pleaded, their testimonies and that of their witnesses and I would frame the issues for determination in the suit as follows: -
 - a. Whether the suit is barred under the *Land Adjudication Act*.
 - b. Whether the Defendant had acquired the suit land fraudulently.
 - c. Whether the Plaintiff is entitled to the reliefs sought.
11. The Defendant contends in her Statement of Defence that the suit is barred by virtue of the provisions of sections 25, 26 and 29 of the *Land Adjudication Act*. It is not in dispute that the Plaintiff's husband was allocated the suit property through an adjudication process and that she alleges that the land was fraudulently registered in the name of the Defendant's husband.
12. The Defendant on the other hand contends that the land was registered in her husband's name after he filed an objection which was confirmed by DW2 – the Land Adjudication Officer Transmara.
13. The *Land Adjudication Act* under section 29 provides an elaborate procedure through which a person who feels aggrieved by the determination of an objection can ventilate their grievances. In the instant case, although the Plaintiff avers that there was fraud in the transfer of the suit land in the name of the Defendant's husband, she has not stated with clarity the specifics of the said fraud or who the actors/ perpetrators of the said fraud were either in her pleadings or testimony.



14. DW2 had informed the court that the suit land was registered in the name of the Defendant's husband upon the determination of an objection and the Plaintiff being aggrieved by the decision in the hearing of the objection ought to have pursued the process by way of an Appeal to the Minister within 60 days of the determination.
15. The Plaintiff has not faulted or controverted the evidence of DW2 who heard and determined the objection and in view of the above, it is my considered opinion that the Plaintiff has not discharged the burden of proof to show how fraud took place and consequently I find that the suit herein is barred pursuant to the provisions of the *Land Adjudication Act*.
16. I am in agreement with the submissions by the Defendant that the onus was on the Plaintiff to prove that the registration of the suit land in the name of the Defendant's husband was fraudulent and once the Adjudication Officer had heard the objection and made a determination thereof, that there was an element of fraud.
17. The Plaintiff has not demonstrated how a lawful and successful objection against her deceased husband was fraudulent and the only logical conclusion that this court can make is that the alteration was carried out lawfully and the Defendant's husband was lawfully registered as the owner of the suit land.
18. On whether the Plaintiff is entitled to the reliefs sought, I find that the Plaintiff having failed to prove fraud; I am of the view that he is not entitled to the reliefs sought and the suit herein is dismissed with costs to the Defendant. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAROK ON 24TH DAY OF OCTOBER, 2018.

MOHAMMED KULLOW

JUDGE

In presence of; -

Omwoyo for the Plaintiff

Adala h/b for Ms. Ochwal for the Defendant

Court Assistant - Timothy Chuma

