



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 66 OF 2016**

**GEOFFREY KANYANGI AMADALO .....PLAINTIFF**

**VERSUS**

**ALEXANDER AMADALO**

**MULEMI JACKSON**

**BROWN THUO .....DEFENDANTS**

**JUDGEMENT**

By a plaint dated 26<sup>th</sup> April 2016 the plaintiff avers that, at all material times been the registered owner of land parcel No. North Maragoli/Kivagala/666. The defendants on 13<sup>th</sup> April, 2016 filed a caution against the title claiming interest as beneficiaries. The plaintiff avers that the defendants have never had any beneficiary interest whatsoever against his land and therefore the caution lodged by them was unlawful and should be removed. It is the plaintiff's case that since 13<sup>th</sup> April, 2016 the defendants jointly conspired and chased his workers from the land and his tea crop on the land is going to waste and the plaintiff seeks compensation against the defendants jointly and severally. The plaintiff also claims for an order of permanent injunction against the defendants jointly and severally restraining them from interfering with L.R. North Maragoli/Kivagala/666 in any manner whatsoever. The plaintiff also claims for judgment against the defendants for removal of the caution registered against the title on 13<sup>th</sup> April, 2016. The plaintiff prays for judgment against the defendants:-

- (a) For a permanent injunction restraining them personally, their agents, assigns or workers from entering L.R. North Maragoli/Kivagala/666 and or interfering with the same in any manner whatsoever.
- (b) Removal of the caution registered against L.R. North Maragoli/Kivagala/666.
- (c) Costs.
- (d) Interest.

PW1 testified that the defendants are his brothers. He states that their father gave him the land and executed all the transfer documents his father has sworn an affidavit to that effect. He produced the green card and the title deed PEx.1 & 2 as proof of ownership. PW2 Momanyi Advocate confirms that the said Laban Amadalo swore the affidavit before him which he signed and commissioned PEx.3.

The defendants all testified and stated that they are entitled to their fathers land and believe that the transfer is a forgery. The 3<sup>rd</sup> defendant states that he is the son of the said Laban Amadalo and hence is entitled to part of the land. All the defendants admit that they do not live on that land. Their father bought the suit land L.R. North Maragoli/Kivagala/666 and their ancestral land is L.R. North Maragoli/Kivagala/671 and 673.

This court has carefully considered the evidence and submissions therein. The Land Registration Act is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides as follows:

*“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”*

Section 26 (1) of the Land Registration Act states as follows:

*“The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the*

person named as proprietor of the land is the absolute and indefeasible owner... and the title of that proprietor shall not be subject to challenge except –

- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

The law is clear that, the Certificate of Title issued by the Registrar upon registration shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner and the title of that proprietor shall not be subject to challenge except – On the ground of fraud or misrepresentation to which the person is proved to be a party; or Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

This court in considering this matter referred to the case of Elijah Makeri Nyangw’ra –vs- Stephen Mungai Njuguna & Another (2013) eKLR where the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. Hon. Justice Munyao Sila in the case while considering the application of section 26(1) (a) and (b) of the Land Registration Act rendered himself as follows:-

“-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.”

It is not in dispute that the plaintiff is the registered owner of land parcel No. North Maragoli/Kivagala/666. PW1 testified that the defendants are his brothers. He states that their father gave him the land and executed all the transfer documents his father has sworn an affidavit to that effect. He produced the green card and the title deed PEx1 & 2 as proof of ownership. The said father Laban Amadalo is alive but sickly and bedridden and hence swore the affidavit before an advocate which he signed and was commissioned PEx3. I have perused the said affidavit in great detail. He states that he has willingly given the said suit parcel to the plaintiff as a gift. He financed the 1<sup>st</sup> defendant to buy land in Turbo. He has given the 2<sup>nd</sup> defendant a portion of land is L.R. North Maragoli/Kivagala/671 and 673 which is his ancestral land. He did not give the 3<sup>rd</sup> defendant any land as he is not his biological son and has no obligation to do so. According to his affidavit evidence the 3<sup>rd</sup> defendant was born between 1970 and 1973 when he has separated with his mother. Indeed it has come out in the defence that the 1<sup>st</sup> defendant bought land in Kitale and lives there. The 2<sup>nd</sup> defendant lives on a portion of land is L.R. North Maragoli/Kivagala/671 and 673 and the 3<sup>rd</sup> defendant lives in Nairobi. I see no evidence of fraud on the part of the plaintiff in the acquisition of the said title. I find that the plaintiff has proved his case on a balance of probabilities and grant the following orders;

1. A permanent injunction restraining the defendants personally, their agents, assigns or workers from entering L.R. North Maragoli/Kivagala/666 and or interfering with the same in any manner whatsoever.
2. Removal of the caution registered against L.R. North Maragoli/Kivagala/666.
3. Costs of this suit to the plaintiff.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 22<sup>ND</sup> DAY OF NOVEMBER 2018.**

**N.A. MATHEKA**

**JUDGE**