



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 187 OF 2013**

**MALIKO AKULE MUSA.....PLAINTIFF**

**VERSUS**

**MIRIAM KALENYA KIHONZI**

**FLORA MUDOLA KIHUZI.....DEFENDANTS**

**JUDGEMENT**

By a plaint dated 28<sup>th</sup> June 2013, the plaintiff avers that he was the registered owner of L.R. KAKAMEGA/IGUHU/1258 as at 9/10/1976 until 19/12/2008 when the defendants herein fraudulently registered themselves as the joint proprietors. The plaintiff avers that the defendants herein are his daughters yet they have deregistered him fraudulently as the joint proprietors.

The plaintiffs claim against the defendants herein is for the cancellation of the registration made on 19/12/2008 of the 1<sup>st</sup> and 2<sup>nd</sup> defendants as joint proprietor of L.R. KAKAMEGA/IGUHU/1258 and subsequent issuance of a title deed to the plaintiff herein. The plaintiff prays for judgment against the defendants herein for;

- (a) The cancellation of the registrations made on 19/12/2008 of the 1<sup>st</sup> and 2<sup>nd</sup> defendants as joint proprietors of L.R. KAKAMEGA/IGUHU/1258 and subsequent issuance of a title deed to the plaintiff herein.
- (b) Costs of this suit and interest.

PW1 produced the copy of the title deed and the green card. He also produced the transfer form which he states is a forgery and the photo on the same is not his.

The defendants never gave oral evidence. The defendants state in their statement of defence that the plaintiff left home in 1975 and the family never knew where he was till he came back with another family in 2008. The land in question was donated to defendants' mother by her sister, their aunt and the plaintiff never contributed to its acquisition hence they have a right to the land. The plaintiff is their father, they have never been approached to settle the problem and will request for alternative approach to sort out the matter. In their submissions by their advocate the defendants state that they are willing to give up the land but should not be saddled with costs.

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 was the registered owner of L.R. KAKAMEGA/IGUHU/1258 as at 9/10/1976 until 19/12/2008. On 19/12/2008 the 1<sup>st</sup> and 2<sup>nd</sup> defendants were registered as joint proprietors of L.R. KAKAMEGA/IGUHU/1258. The plaintiff gave evidence that the defendants herein are his daughters yet they have deregistered him fraudulently as the joint proprietors. He never gave consent nor did he sign any transfer documents. Infact the photo on the transfer document is not his. The defendants stated in submissions that they were willing to return the suit parcel to their father the plaintiff and ask that they should not be made to pay costs. They offered no evidence to prove that this transfer was not fraudulent. I find that the defendants fraudulently transferred their father's land into their joint names. This matter was filed way back in 2013 and they never offered to settle the same and it is now after the full hearing which they did not bother to attend that they want to be excused from paying the costs. Their request shall not be granted. I find that the plaintiff has proved his case on a balance of probabilities and grant the following orders;

1. The cancellation of the registrations made on 19/12/2008 of the 1<sup>st</sup> and 2<sup>nd</sup> defendants as joint proprietors of L.R. KAKAMEGA/IGUHU/1258 and subsequent issuance of a title deed to the plaintiff herein.

2. 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**