



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 376 OF 2013

OKECH CHEPONDO.....PLAINTIFF

VERSUS

STEPHEN OTUNDO KECHI

ELLISHAMO OKENO ODUYA

ENOCK SANDE KECHI

EMOS MUKABANA

JOSEPH ATUTA OUMA.....DEFENDANTS

JUDGEMENT

In a plaint dated 28th November 2013, the plaintiff brings this suit in the capacity as the administrator of the estate of Selefano Okechi Chepondo alias Kechi Chapondo who prior to his death on 1st June, 1983 was registered proprietor of land No. MARAMA/SHIRO TSA/603. That after the death of the late Selefano Okechi Chepondo alias Kechi Chapondo the 1st defendant fraudulently caused land parcel No. MARAMA/SHIRO TSA/603 to be subdivided. As a result of the fraud committed by the defendant, the estate of the late Selefano Okechi Chepondo alias Kechi Chapondo has suffered loss and damages and continued to suffer so to date. That the plaintiff prays that the court orders cancellation of title No.'s MARAMA/SHIRO TSA/1242, 1243, 1377, 1378, 1379, 1380, 1726 and 1727 registered in the name of the defendant and/or any other registration thereof and the same be reverted back to the original title being MARAMA/SHIRO TSA/603 in the names of the deceased Selefano Okechi Chepondo alias Kechi Chapondo. The plaintiff prays for judgment against the defendants jointly and severally for:-

- (a) Cancellation of title No's MARAMA/SHIRO TSA/1242, 1243, 1377, 1378, 1379, 1380, 1726 and 1727 registered in the name of the defendants and/or any other registration thereof and the same be reverted back to the original title being MARAMA/SHIRO TSA/603 in the names of the deceased Selefano Okechi Chepondo alias Kechi Chapondo.
- (b) Costs of this suit.
- (c) That any other relief this honourable court deems fit and just in the circumstances to grant.

1st and 3rd defendants gave evidence and submitted that they support the plaintiff as the land was transferred without succession being done. PW1 states that whoever he contracted to transact land parcel number MARAMA/SHIRO TSA/603 did not cause it to go through succession process.

The 4th defendant in his statement of defence avers that he is the registered owner of land parcel number Marama/Shirotsa/1378 being a subdivision of Marama/Shirotsa/1242 which land he has in occupation since 1998 when he purchased the same for value. The 4th defendant further avers that he was approached by the plaintiff herein Syrus Omukhulu Okech and his brother Fredrick Obuchafu (now deceased) and the two offered him each one acre piece of land for sale at a price which they agreed and made an agreement in 1998. The 4th defendant made inquiries from the plaintiff and his brother then and found out that the land parcel Marama/Shirotsa/1242 out of which the plaintiff and his brother were selling him 2 acres was to be carved was registered in the names of one Stephen Otundo Kechi the eldest brother to the plaintiff herein and the 1st defendant in this suit. The plaintiff then in company with the registered owner disposed off one acre part of his share while Fredrick Obuchafu sold his share from Marama/Shirotsa/1242 and Stephen agreed to sign the transfer documents which he did the 4th defendant obtained title as a purchaser for value. The 4th defendant avers that he is an innocent purchaser for value whose proprietor rights have to be protected. The 5th defendant did not file any defence.

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 after the death of the late Selefano Okechi Chepondo alias Kechi Chapondo the 1st defendant caused land parcel No. MARAMA/SHIRO TSA/603 to be subdivided. It has come out in evidence that the late Selefano Okechi Chepondo alias Kechi Chapondo died on 1st June, 1983. That the late Selefano Okechi Chepondo alias Kechi Chapondo died before transferring and subdividing land parcel No. MARAMA/SHIRO TSA/603. The 1st defendant caused land parcel No. MARAMA/SHIRO TSA/603 to be sub-divided on 15th November, 1994 and 9th September, 1998 and transferred portions of the same to the 2nd, 3rd, 4th and 5th defendants illegally. That the defendants presented to the Land Registrar transfer of land documents purporting that it was done by the late Selefano Okechi Chepondo alias Kechi Chapondo knowingly it was not. No succession of the estate of the deceased was done to facilitate distribution of his property contrary to the action of the defendants herein. I find that the plaintiff has proved his case on a balance of probabilities and I grant the following orders;

1. Cancellation of title No’s MARAMA/SHIRO TSA/1242, 1243, 1377, 1378, 1379, 1380, 1726 and 1727 registered in the name of the defendants and/or any other registration thereof and the same be reverted back to the original title being MARAMA/SHIRO TSA/603 in the name of the deceased Selefano Okechi Chepondo alias Kechi Chapondo.
2. Costs of this suit to the plaintiff.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 22ND DAY OF NOVEMBER 2018.

N.A. MATHEKA

JUDGE