



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 308 OF 2015

STEPHEN KIMTAI CHUMBA.....PLAINTIFF

VERSUS

DANIEL BARABAR BARNGETUNY

KIPTESOI CLEMENT ARAP TOO.....DEFENDANTS

JUDGEMENT

The plaintiff avers his father and the defendants are brothers and the joint registered proprietor of suit land parcel number KAKAMEGA/SOY/219. He avers that after the death of his father his mother Eunice Cherotich Chumba processed succession and she was to get 16 acres of the suit land and the defendants were to get 6 acres each. After the demise of his mother the defendants divided the land into two parcels LR Nos. KAKAMEGA/SOY/2109 and KAKAMEGA/SOY/2110, leaving him and his brothers out. The plaintiff seeking for judgement in terms of the following orders;

1. An order for nullification of title deeds LR Nos. KAKAMEGA/SOY/2109 and KAKAMEGA/SOY/2110 and the same to be shared between the plaintiff and the defendants.
2. Costs of this suit and interest.

PW2 and PW3 corroborated the plaintiff's evidence. The plaintiff produced search certificates as PEx1 and PEx2 showing that the suit land belongs to a third party one Anna Kaboi Njenga.

The defendants maintain that no succession was ever done for the late Eunice Cherotich Chumba and she was never entitled to the said land. The 1st defendant testified that they sold the suit land to Anna Kaboi Njenga during the 1992 tribal clashes and the land belonged to them. The plaintiff's mother Eunice Cherotich Chumba sold hers and bought land in Kamagut where the plaintiff stays. DW1 produced a sale agreement to show that the late Eunice Cherotich Chumba sold her land to one Anna Kaboi Njenga. By the time this suit was filed they were no longer the registered proprietors.

This court has carefully considered the evidence and the submissions therein. It is a finding of fact that the suit parcel of land LR Nos. KAKAMEGA/SOY/2109 and KAKAMEGA/SOY/2110 are registered in the name of one Anna Kaboi Njenga.

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.”*

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”.

The plaintiff stated that the land belonged to his mother the late Eunice Cherotich Chumba. The plaintiff had filed this suit as the legal representative of the Estate of Eunice Cherotich Chumba before obtaining grant of letters of administration, hence he lacks the necessary locus standi. As was held in the case of Otieno vs Ougo 1986-1989 E.A.L.R 486:

“... an administrator is not entitled to bring any, action as administrator before he has taken out letters of administration. If he does, the action is incompetent as of the date of inception”.

Evidently, the plaintiff herein does not have the locus standi to file this suit. Be that as it may, the plaintiff has not adduced any evidence to show that his mother was entitled to the suit land if at all. He admits that they sold their parcel of land and bought land in Kamagut where he now stays. I find that the registered proprietor of the suit land Anna Kaboi Njenga is not a party to this suit. By the time this suit was filed in court she was already the registered proprietor having been registered on the 9th January 2014. 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 20TH DAY OF NOVEMBER 2018.

N.A. MATHEKA

JUDGE