



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 218 OF 2012

[Formerly Eldoret Hccc No. 81 of 2005]

JAMIN KIOMBE LIDODO.....PLAINTIFF

VERSUS

EMILY JERONO KIOMBE.....1ST DEFENDANT

THE HON. ATTORNEY GENERAL

(On behalf of Soy Land Disputes Tribunal) and District Land Registrar,

Uasin Gishu).....2ND DEFENDANT

JUDGMENT

The suit herein was instituted by plaint dated 1.9.2005 and amended and dated at Eldoret on the 20.11.2007 pursuant to the Order of the court made on 14.11.2007. In the amended plaint, the plaintiff claims that the plaintiff and defendant are husband and wife and that at all times herein, the plaintiff was the registered proprietor of all that parcel of land known as Title No. Moi's Bridge/Moi's Bridge Block 8 (Natwana ADC) 68 having purchased the same from Natwana ADC Ltd in 1978.

That in or about 4th November, 1998 the plaintiff pledged his title No. L. R. Moi's Bridge/Moi's Bridge Block 8 (Natwana ADC) 68 as security in Kitale Criminal Case No. 3385 of 1998 (Republic Vs Fredrick Masita Kiombe) for bail pending trial, which title was misplaced, lost and or destroyed.

That unknown to the plaintiff, the 1st defendant lodged a claim with the 2nd defendant claiming ownership of the suit property namely L. R. Moi's Bridge/Moi's Bridge Block 8 (Natwana ADC) 68 measuring 4.510 Ha on about 5.6.2002.

That upon the deliberations of the 2nd defendant over a claim presented by the 1st defendant and without notice to the plaintiff, the 2nd defendant purported to award the 1st defendant the entire suit land and ordered deregistration of the plaintiff and the registration of the 1st defendant as the owner and proprietor of all that land comprised in Title No. L. R. Moi's Bridge/Moi's Bridge Block 8 (Natwana ADC) 68.

That pursuant to the activities of the defendants, the proceedings and award of the 2nd defendant were lodged, read and adopted as Eldoret Chief Magistrate's Award No. 58 of 2002 and a decree issued and registered on 7th May, 2004 in favour of the 1st defendant.

It is the plaintiff's case that the 2nd defendant did not have jurisdiction to entertain the claim lodged by the 1st defendant and the decision arrived at was thus illegal, null and void as more particularized below.

The plaintiff particularizes the illegality as the fact that the claim before the Tribunal was without basis as it sought to devolve property of a person who was still living. That the Tribunal did not have jurisdiction to deliberate and determine the issue of ownership of land. Moreover, that the Tribunal did not have jurisdiction to hear a claim touching on registered land. The complaint before the Tribunal was not commenced by way of claim and none was served on the plaintiff. The plaintiff further complains that the dispute was heard and determined by a panel of elders which was not qualified to hear and determine the dispute under the provisions of the Land Disputes Tribunal Act. No. 18 of 1990. Last but not least is the complaint that the decision is ambiguous and unenforceable and that the panel of elders made an award outside their jurisdiction.

The plaintiff claims for a declaration that the plaintiff is the absolute owner of the whole of that parcel of land known as L. R. Moi's Bridge/Moi's Bridge Block 8 (Natwana ADC) 68 measuring 4.510 Ha and a declaration that the deliberation of the 2nd defendant in Soy Land Disputes Causes No. 3 of 2002 as adopted by Eldoret CMCC Award No. 58 of 2002 is illegal, null and void. He prays for a permanent

injunction restraining the 1st defendant, her agents, servants and or employees from trespassing into, cultivating, constructing upon leasing and or in any other whatsoever interfering with the plaintiff's quiet possession and enjoyment of the suit land. Lastly, he prays for an order directing the Uasin Gishu District Land Registrar to cancel the registration of the 1st defendant as the owner and proprietor of all that parcel of land known as L. R. Moi's Bridge/Moi's Bridge Block 8 (Natwana ADC) 68 and its substitution thereof with that of the plaintiff. He prays for costs of the suit.

In the amended defence and counterclaim, the defendant denies any marriage between her and the plaintiff which was dissolved in 2002. She claims to have purchased the suit land in 1979 and upon payment of full consideration, her name was entered in the register as the first registered owner of the suit land and the registration title was issued on 2.11.1995. The 1st defendant was involved in a road accident and was hospitalized. The plaintiff fraudulently caused the suit land to be registered in her name but the same was reversed in 2004. The plaintiff is therefore not the rightful owner of the land.

The plaintiff was given notice of the proceedings before the Tribunal, he attached proceedings, gave evidence and called witnesses. She prays that the suit be dismissed.

The 1st defendant in her counterclaim, the 1st defendant claims that on or about 5th June 1979, the 1st defendant purchased what was then known as Plot 68 but which is now known as land parcel number Moi's Bridge/Moi's Bridge Block 8 (Natwana ADC) 68 situated at Natwana ADC farm in Moi's Bridge, Uasin Gishu District from one Kibor A. Samoei who is now deceased.

Upon paying the total consideration, the 1st defendant's name was entered into the register as the 1st registered owner of land parcel number Moi's Bridge/Moi's Bridge Block 8 (Natwana ADC) 68 and a title deed was issued to her on 2nd November, 1995. That the plaintiff never challenged the 1st defendant's title or ownership of the suit land before any court of competent jurisdiction. That on or about 13th January 1998, the 1st defendant was involved in a road traffic accident along the Kajiado – Isinya road which resulted in her being admitted to the St. James Hospital, Nairobi.

That during the course of her said admission, the plaintiff obtained possession of the 1st defendant's original documents of title and caused himself to be registered as the owner of the suit land without the benefit of any decree or order from court.

That the 1st defendant however contends that the cancellation of the title deed and the registration of the same in the name of the plaintiff was obtained by fraud and was illegal.

The defendant has given the particulars of fraud and illegality on the part of the plaintiff as Transferring the 1st defendant's land into his own name without the 1st defendant's consent and without obtaining the consent of the relevant land control board and without paying any consideration for it. Causing cancellation of a first registration title contrary to the law and without the sanction of an order or decree from a court of competent jurisdiction. Forging transfer and other documents. Obtaining registration of the land by making false statements and representations. Stealing the 1st defendant's original documents of title with a view of obtaining registration of the suit land in his name.

That upon obtaining the title deed over the suit land, the plaintiff continued in unlawful occupation thereof and embarked on the process of systematically selling off portions of it.

The Uasin Gishu District Land Registrar however cancelled the plaintiff's registration and re-issued the title deed for land parcel number Moi's Bridge/Moi's Bridge Block 8 (Natwana ADC) 68 to the 1st defendant on 7th May, 2004.

The 1st defendant claim against the plaintiff is therefore for a declaration that the 1st defendant the registered and the lawful owner of the whole of that parcel of land known as Moi's Bridge/Moi's Bridge Block 8 (Natwana ADC) 68 and that the cancellation of the 1st defendant's first registration title issued on 2nd November, 1995 was fraudulent, illegal, null and void.

The 1st defendant's additional claim against the plaintiff is for an order directing the eviction of the plaintiff, his servants and or agents from the whole of that parcel of land known as Moi's Bridge/Moi's Bridge Block 8 (Natwana ADC) 68 and for an account of all the mesne profits arising from the plaintiff's occupation and use of the said land. Lastly, he prays for costs of the suit and Interest.

In the reply, to amended defence and defence to counterclaim, the plaintiff states that the 1st defendant purchased a parcel of land measuring 10 acres from Plot No. 29 which was comprised in L. R. No. 8158/2 and which is the subject of the said sale agreement but not Moi's Bridge/Moi's Bridge Block 8(Natwana ADC) 68 was lawfully purchased by the plaintiff and excised from L. R. No. 8158/2 to which the plaintiff purchased by payment for allotted shares but not as pleaded by the 1st defendant in the counterclaim.

The plaintiff avers that he bought the suit land by earnings as a teacher in employment which monies he used to channel to the 1st defendant who was unemployed. He avers that the 1st defendant was unemployed and incapable of raising capital sufficient to purchase shares in the suit land.

The Attorney General on behalf of Soy Land disputes Tribunal and the District Land Registrar, Uasin Gishu states that the registration of the 1st defendant was done after following the provision of law laid down in effecting registration and that the documents presented to the 2nd defendant could have convinced a cautious and prudent man that they were genuine and valid.

Parties agreed to proceed by way of submissions and submissions were filed by all parties. The plaintiff's final submissions were filed on 22.5.2018.

The gravamen of the plaintiff's submissions is that the Soy Division Land Disputes Tribunal lacked jurisdiction to determine any issue to do with ownership of property.

Under Section 3(1) of the Land Disputes Tribunal Act, 1990 (now repealed), the jurisdiction of the Tribunal was limited to the division of or the determination of boundaries to land, including land held in common, a claim to occupy or work on land or trespass the land.

The plaintiff relies on the decision of Daudi Ngetich Kimibei Vs the Attorney General and Another (Eldoret Hccc No. 55 of 1998). He also relies on Munyui Kahuha Vs Ngang Kahuha, Civil Appeal No. 50 of 502 of 2000. He also refers on Civil Appeal No. 157 of 2001, Asman Wepukhulu & Another Vs Francis Wakwabubi Biketi.

The 1st defendant submits that an award of the Tribunal which has been adopted by the Magistrate's court as provided by law cannot be challenged by way of declaration. The same should have been challenged by appeal to the Appeals Committee and thereafter appeal to the High Court or by Judicial Review.

The 2nd defendant submits that the suit is inconsistent as it is not contemplated under the Land Disputes Tribunal Act. The plaintiff ought to have approached the court by way of appeal under Section 8(1) of the Land Disputes Tribunal Act or Judicial Review.

The 2nd defendant submits further that the proceedings before the Tribunal were proper. Lastly, the Attorney General submits that an order cannot be made against the Eldoret Magistrate's Court that is not a party.

I have considered the pleadings and the submissions of all counsels and do find that the main issue is whether the suit is properly before court by way of plaint seeking for orders of declaration that the decision of Soy Land Disputes Tribunal to be a nullity.

Section 3(1) of the Land Disputes Tribunal Act, 1990 (repealed) limited the jurisdiction of the Land Disputes Tribunal to a claim to occupy and work on land, division or determination of boundaries, and trespass to land

Section 8(1) provided for any party to the dispute dissatisfied by the decision of the tribunal to appeal to the appeals committee within 30 days of the decision. Any party dissatisfied with the decision of the appeals' committee had the right to appeal to the High Court within 60 days of the decision made on a point of law.

It is clear from the foregoing that after adoption by the Magistrate's court, the award of the Tribunal becomes a judgment of the court that can only be challenged by way of an appeal to the Appeals' Committee and subsequent appeal to the High Court or by Judicial Review. The plaintiff in this case did not challenge the decision of the Tribunal and its adoption in accordance with the Land Disputes Tribunal Act or by way of Judicial Review. That is the only known procedure for challenging the said decision.

This court will not belabor to determine the other issues as there is a valid judgment of the Magistrate's court which has been executed. However, on the counterclaim, this court finds that the 1st defendant is the registered proprietor of the suit property and therefore, should enjoy possession of the suit property.

The 1st defendant is entitled to the orders sought in the counterclaim and therefore It is hereby declared that the 1st defendant is the registered and the lawful owner of the whole of that parcel of land known as Moi's Bridge/Moi's Bridge Block 8 (Natwana ADC) 68 and that the cancellation of the 1st defendant's first registration title issued on 2nd November, 1995 was without basis null and void.

This court issues an order directing the eviction of the plaintiff, his servants and or agents from the whole of that parcel of land known as Moi's Bridge/Moi's Bridge Block 8 (Natwana ADC) 68. Costs of the suit and interest are awarded to the defendants. The plaintiff be given 60 days' notice before any eviction is done. Orders accordingly.

Dated and delivered at Eldoret this 20th day of December, 2018.

A. OMBWAYO

JUDGE