



REPUBLIC OF KENYA
IN THE LAND AND ENVIRONMENT COURT OF KENYA
AT KAKAMEGA

LAND CASE NO. 16 OF 2016

ASMAN POLYSUMBA.....PLAINTIFF

- VERSUS -

JOACHIM MUJEMA.....1ST DEFENDANT

SYLVESTER NAWATWEKA.....2ND DEFENDANT

JANE OGOMBE.....3RD DEFENDANT

JUDGMENT

The Plaintiff in this case states that he is the registered owner of L.R BUTSOTSO/ESUMEIYA/3993. He bought the said parcel of land from one Charles Oduong Okumu who was the registered owner then and who entered into a sale agreement dated 11th September 2013, whereof instruments of transfer and other related documents were subsequently registered in favour of the Plaintiff who is now the registered owner of the subject land. The defendants have occupied the said land unlawfully and refuse to vacate. The Plaintiff therefore seeks an order for eviction and costs of this suit.

PW2 Charles Oduong Okumu states that the land belonged to him and he sold it to the Plaintiff for the benefit of his son PW3. The 1st and 2nd Defendant, (Joachim Mujema and Sylvester Nawatekwa respectively), are his sons by his first wife who is the 3rd Defendant, Jane Ogombe. He had partitioned and apportioned his land to each and every one of them and it was upto them to stay in their portions of land and get their title deeds at their own cost. PW3, Amstrong Oduong confirms that his portion of the family land given to him by his father PW2, was sold to the Plaintiff after it was divided to him and his siblings. He received the purchase price and went to settle in Bondo.

The Defendants deponed that at all material times they were and still are the legal owners of the parcel of land known as L.R BUTSOTSO/ESUMEIYA/3993. They have not sold, leased, charged or dealt with the suit premises so as to in any way dispose of their ownership interest to either the Plaintiff or any third party. The Defendants counter claim is for the Plaintiff's suit to be dismissed with costs. A declaration that the defendants are the lawful owners to the suit property. That an inhibition, caution and restriction lodged against the suit property be reinstated till fair and just determination of this suit. A permanent injunction restraining the Plaintiff and or any other third parties by themselves and or their servants and or agents from entering upon, occupying, constructing and or in any other manner whatsoever from dealing with or interfering with and or remaining on or continuing in occupation of the suit premises. Special damages of Kshs. 2,000/- and costs of the counter claim. The defence has attached the sale agreement between the Plaintiff and PW2, the mutation form together with correspondence from the Chief calling

for a meeting.

This dispute is one of ownership of a parcel of land and the court is guided by the following provisions of the law;

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.”

Looking at the facts of this case, the Plaintiff has produced documents in his assertion of ownership over the disputed parcel of land, namely a sale agreement, mutation form and the title deed to prove ownership. He narrated how after the mutation PW2 agreed to sell the said parcel for Kshs.285,000/- which he paid and title was passed on to him. This evidence has been challenged by the defendants who say they were not party to the mutation and or the sale and are still the lawful owners of the said suit parcel of land. The court has perused the documents before it in great detail. Plaintiff Exhibit 1(Title Deed) clearly indicates that the suit parcel of land belongs to the Plaintiff, Asman Poyisumba of ID Number 13345213. A search certificate (Plaintiff Exhibit 2) shows that the original owner was PW2 one Charles Odwang Okumu. There is also a mutation form on record showing that the Parcel of land was divided and it is PW2's contention that he subdivided the land to his sons and two wives and the Chief was involved. He sold the said parcel L.R BUTSOTSO/ESUMEIYA/3993 which belonged to one of his sons PW3(after subdivision) to the Plaintiff because PW3 had decided to use the money to settle in Bondo.

In considering the Defendants' defence and counterclaim the court 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 defendants have not produced any evidence to show that there was any fraud or misrepresentation on the part of the Plaintiff. There is also no evidence that the Plaintiff acquired the title through a corrupt scheme but instead was a bona fide purchaser. The Defendants appear to have been aware of the whole process of subdivision and eventual sale but neglected and or refused to participate. I find the defence has no merit and I dismiss the counterclaim with costs.

I therefore find that the Plaintiff is the lawful and registered owner of the suit parcel of land namely L.R BUTSOTSO/ESUMEIYA/3993 and I grant the following prayers;

1. Eviction order to issue

2. Costs of this suit to the Plaintiff.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 1ST DAY OF MARCH 2017.

N.A. MATHEKA

JUDGE