

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC LAND CASE NO. 105 OF 2011

PETER MBOGHO MWANGOMBE.....PLAINTIFF

-VERUS-

ZAHARA ADAM.....DEFENDANT

AND

NOREEN GULAM.....OBJECTOR/APPLICANT

RULING

1. The application for determination is dated 27th July 2015 brought by the objector/applicant. She prays for the following orders:

1. Spent

2. Spent

3. That the property known as parcel No. 1956/966 Voi attached pursuant to the Decree issued herein belongs to the Objector and not the Defendant.

4. That the costs of this Application be provided for.

2. The application is founded on the premise that plot No 1956/966 belongs to the applicant and not the defendant judgement debtor having purchased the same sometimes in July 2014. In support of her application, she annexed a copy of title deed showing at entry No 4 on page 2 of the document that a transfer was registered to Noreen Kosar Gulam on 15th August 2014. She also annexed a copy of transfer executed between the defendant and Noreen Kosar Gulam dated 25th July 2014 and memorandum of registration dated 25.7.2014.

3. The application is opposed by the plaintiff decree holder stating that the objector is a business partner of the defendant and therefore the alleged sale is a ploy to cause confusion and defeat the cause of justice. The plaintiff alleged that there is no plot in Voi Municipality which can be sold at Kshs 1.5 Million. He annexed a search document from ministry of lands stating that as at 24.6.2015, the defendant was the registered owner. In the encumbrance section is recorded a Court Order dated 4.9.2014 from Misc Civil Appel No 2 of 2014 restricting registration of any transactions.

4. In further reply, the objector filed a supplementary affidavit annexing a letter by J. G Wanjohi dated 3.9.2015 stating that entry No 4 was inadvertently left unsigned after the transfer from Zahara Adam to Noreen Kosar Gulam was registered. The parties then filed written submissions which I have read and considered.

5. The only question for my determination is whether the objector has proved that indeed she is the registered owner of the suit property which the plaintiff has attached in execution of a decree. I first assumed the property passed on to Noreen Kosar Gulam on 15.8.2014 until she contradicted her affidavit

evidence by introducing the letter dated 3rd September 2015 by the registrar of titles indicating the entry No 4 was inadvertently not signed at the time it was made. The letter did not specify when the entry was subsequently signed. Probably this explains why when the plaintiff did a search the lands record revealed the defendant was the registered owner as at 24th June 2015.

6. The ownership can only change hands if the entry is endorsed by the land registrar. If at the time of execution of the decree the endorsement had not been made, then the property is presumed to be still owned by the defendant/judgement debtor. Taking into account that this fact is confirmed by the objector's own document being the registrar's letter, she cannot blame the decree holder for pursuing her decree against the defendant. I find the objection proceedings fails as equity aids the vigilant not the indolent. The land registrar did not deny the contents of the search certificate annexed by the plaintiff. The objector can take up liability proceedings against whoever failed to endorse the transfer in her favour if at all. Accordingly the motion dated 27.7.15 is dismissed for lacking merit with costs.

Dated, signed & delivered at Mombasa this 28th day of April 2017

A. OMOLLO

JUDGE