



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT MILIMANI
ELC CASE NO. 687 OF 2015
MOSES PARANTAI

PERIS WANJIKU MUKURU (Suing as the legal representatives of the Estate of
SOSPETER MUKURU MBEERE (DECEASED)).....PLAINTIFF

=VERSUS=

AMANA PROPERTIES LIMITED.....1ST DEFENDANT

THE REGISTRAR OF TITLES.....2ND DEFENDANT

JUDGEMENT

INTRODUCTION

1. The Plaintiffs are holders of a limited grant of letters of administration in respect of the estate of the late **Sospteter Mukuru Mbeere** (deceased) who was the registered owner of **LR No. 37/246/13 IR 12730** (suit land). The deceased died on 7th June 2011. As at the time of the death of the deceased, the suit land was still registered in his name.

2. As the administrators were taking stock of the properties of the deceased, they discovered that the suitland had allegedly been transferred to the first defendant and transfer duly registered in the first defendant's name on 11th July 2014. This prompted the Plaintiffs to apply for limited letters of administration which enabled them to file the present suit in which they seek the following reliefs:-

A. A declaration that the Plaintiffs are entitled to exclusive and unimpeded right of possession and occupation of the parcel known as reference number 37/246/13 IR number 12730 situated in Nairobi and that the alleged occupation of the plot by the first defendant is illegal, unlawful, null and void.

B. An order of permanent injunction restraining the first defendant either by itself, its employees ,servants and/or agents from continuing to occupy, trespassing on, purporting to sell, subdividing, erecting structures and/or in any other manner interfering with the Plaintiff's quiet enjoyment and possession of land known as reference number 37/246/13 IR number 12730 situated in Nairobi within the Republic of Kenya.

C. An order of eviction against the first defendant from land known as Reference Number

37/246/13 IR Number 12730 situated in Nairobi.

D. An order compelling the first defendant to surrender the title of land known as Reference number 37/246/13 IR number 12730 situated in Nairobi to the second defendant for cancellation and correction of the entries in the register to reflect that the deceased estate is the sole owner of the suit property and to have the title in the plaintiff's name being the legal representatives of the deceased.

E. An order to issue compelling the second defendant to cancel the title issued to the first defendant, cancellation of any entries in the register and to register the same in the plaintiff's names being the legal representatives of the deceased.

F. An order directing the Officer Commanding Station (OCS) Nyayo Stadium Station to provide security and ensure compliance of the orders herein.

G. General damages for loss of user .

H. General damages for trespass

L. General damages for loss of income and mesne profits.

J. Costs of this suit and interest thereon

K. Any other relief this Honourable Court shall deem just and fit to grant.

3. The defendants who were duly served with summons to enter appearance and file defence neither entered appearance nor filed defence. The hearing proceeded by way of formal proof.

PLAINTIFFS' CASE

4. The Plaintiffs testified that when they discovered that the deceased's land had been registered in the name of the first defendant, they embarked on the process of ascertaining how this had been done. They discovered that the suit land had been allegedly transferred to the first defendant through a transfer dated 9th July 2014 and registered on 14th July 2014, at the lands office. The deceased's name was indicated as **Sospeter Mukuru Mberee** and his ID Card Number as 0988926 when his correct name is **Sospeter Mukuru Mbeere** and his **ID Card Number is 1063358**. The deceased died on 7th June 2011. His original ID Card Number was surrendered to the relevant authorities as required.

5. The first defendant is now in the process of selling the suit land to third parties. Efforts by the plaintiffs to register a caveat at the land's office did not succeed as the plaintiffs were asked to bring a court Order to help them secure the land.

ANALYSIS OF EVIDENCE

6. I have examined the documents produced in support of the Plaintiff's case. It is clear from the certificate of death that the deceased died on 7th June 2011, aged 80 years. His original ID card Number was surrendered as per the surrender form dated 30th June 2011. The suit land had been registered in the deceased's name on 3rd June 1972. The suitland remained in his name until 11th July 2014, when it was allegedly transferred to the first defendant at a consideration of **Kshs.5,000,000/**. Four months later, the directors of the first defendant put up the suit land for sale.

7. The records of the first defendant Company cannot be traced at the Registrar of the Companies at least according to the process server who served the summons upon the first defendant through their last known address by way of registered post. This is typical of land fraudsters who use even fake companies and quickly sell other people's properties using forged documents. It is clear that the ID card number on

the transfer is not that of the deceased. His correct ID number is as exhibited in a copy which was produced by the Plaintiffs the original having been surrendered upon the deceased's demise.

8. The transfer is dated after the deceased had already died. The deceased would not have come out of his grave to sign the transfer then go back. I find that the Plaintiffs have substantially proved their claim on a balance of probabilities. There was no evidence adduced on what the land was being used for prior to the transfer to the first defendant. There was also no evidence on what the first defendant is doing with the suit land though it is said to be in possession. It is therefore difficult to assess general damages. Mesne profits are like special damages which have to be pleaded and proved. The same were not pleaded or proved.

CONCLUSION.

9. Having found that the Plaintiffs have substantially proved their case on a balance of probabilities, I enter judgement in favour of the Plaintiffs in terms of prayers **(A),(B),(C),(D),(E),(F),and (J)**. For avoidance of doubt, prayers **(G),(H) and (I)** are hereby rejected for reasons given herein above.

Dated, Signed and Delivered at *Nairobi* this *24th* day of *April 2017*

E.O .OBAGA

JUDGE

In the presence of:-

Mr Ombaka for Plaintiffs

Court Assistant: Hilda

E.O .OBAGA

JUDGE