



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KITALE
LAND CASE NO. 111 OF 2016

RAEL MINAYO (*suing as*

Administrator of the Estate of

SHEM ODANGA ACHARA.....PLAINTIFF

VERSUS

LINET KAGEA EMBUKU.....1STDEFENDANT

SHEM MUDOGO.....2NDDEFENDANT

KISANG LOWANA.....3RDDEFENDANT

J U D G E M E N T

1. The defendants named in this suit never entered appearance and the case proceeded to formal proof on 17/3/2017. The court perused the affidavit of service by Samuel Nyang'au Getonto sworn on 1st August, 2016 and established that service of summons and plaint had been property effected.

2. The plaintiff's case as stated in the plaint dated 19/7/2016 and filed in court on the same day is that: she is the administrator of the Estate of **Shem Odanga Achara**; the land known as **Plot No. 408** situated in Keiyo in Kwanza Location in Trans-Nzoia Count was registered in the deceased's name; the 1st and 2nd defendant sold the plot to the 3rd defendant without the consent of beneficiaries of the deceased's Estate; this is intermeddling, and the 3rd defendant ought to be evicted from the land. She prays for judgement against the defendants jointly and severally for a declaration that the defendants have no proprietary rights over the suitland and that an eviction order should be issued against the 3rd defendant. It is also prayed that a permanent injunction restraining the defendants, and their agents from cultivating and/or in any manner interfering with the suitland be issued.

3. In her evidence in chief the plaintiff reiterated that she is the administrator of her deceased husband's estate. She testified that it is the third defendant who is currently utilizing the suitland. She stated that the 1st and 2nd defendants, who sold the land, are not even her relatives, but are neighbours to the plot. She stated that she had reported the dispute to the local administrators but the same had not been resolved, hence this suit. She produced 7 documents as per the list of documents filed in court on 19/7/2016. She said that she wants an injunction as against the 3rd defendant payment for use of the land by the 3rd defendant since 2016, and costs of the suit.

4. A perusal of the documentary evidence supports the plaintiff's averments above. The grant of letters of administration to the deceased's estate is dated 26/5/2016 hence the plaintiff had capacity to institute these proceedings on behalf of the estate.

5. The Keiyo Farm Company Limited area list of members shows that the deceased was listed as the allottee of Plot No. 408. The letter dated 13/11/2015 from the Assistant County Commissioner addressed to the 1st and 2nd defendants has content that suggests that the 1st and 2nd defendants had at one point in time agreed to refund the 3rd defendant the purchase price by 30/10/2015 which they failed to do.

6. There was no defence filed to the claim. The court finds that the plaintiff has proved her claim on a balance of probabilities. The transfer of Plot No. 408 by the 1st and 2nd defendant to the 3rd defendant was illegal. The 1st and 2nd defendant had no relationship, leave alone authority, with the deceased which could enable them sell the plot. They were not relatives to the deceased or holders of letters of administration to the deceased's estate as the plaintiff is. They had no justification to sell the deceased's land. They never sought any consent from the administrator. The administrator only came to learn of the sale after it had taken place. They pocketed the proceeds of the sale. They are the authors of the whole mischief.

7. I therefore enter judgement for the plaintiff in this suit against the defendants jointly and severally and issue the following orders:-

a. An order of declaration shall issue declaring that the 1st, 2nd and 3rd defendants have no proprietary rights over Plot No. 408 situated in Keiyo in Kwanza Location within Trans-Nzoia County.

b. An order of permanent injunction shall hereby issue restraining the defendants and their agents or any other person claiming under them from cultivating and/or in any manner interfering with the suitland comprised in Plot No. 408 situated in Keiyo in Kwanza Location within Trans-Nzoia County.

c. Costs of the suit shall be borne by the defendants.

d. As no evidence relating to proof of damage was presented before the court, prayer No. (c) is granted but only for a nominal sum of Kshs.100,000/= (One Hundred Thousand Kenya Shillings) as against the defendants jointly and severally.

It is so ordered.

Signed, dated and delivered at Kitale on this 30th day of May, 2017.

MWANGI NJOROGE

JUDGE

30/05/2017

Before - Mwangi Njoroge Judge

Court Assistant - Isabellah

Mr. Teti for the Plaintiff.

Judgement read in open court.

MWANGI NJOROGE

JUDGE

30/05/2017