



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISII

ELC CAUSE NO. 53 OF 2013

CONSEFUTA KEMUNTO.....PLAINTIFF

-VERSUS-

DORCAS KWAMBOKA.....DEFENDANT

JUDGEMENT

The Plaintiff in this suit filed a plaint dated 8th February, 2013 against the Defendant. The Plaintiff contends that sometimes in 2004 she sold a parcel of land registration number **WEST KITUTU/BOGEKA/3725** to one Esther Kemunto Obaga and a sub-division carried out and a new title issued for the said parcel and registered as **WEST KITUTU/BOGEKA/1476**.

Subsequent to the sale and registration of the new parcel the plaintiff new mutations were prepared sub-dividing **WEST KITUTU/BOGEKA/1476** into two portions namely 3724 and 3725. However, the Defendant fraudulently and without any authority caused the inclusion for registration of a further title **WEST KITUTU/BOGEKA/3950**.

The plaintiff alleges fraud on the part of the Defendant and the particulars of the said fraud are insertion of her name into the mutation forms, presenting forged documents to the lands office as a result of which the plaintiff alleges to have suffered loss.

The Plaintiff thus claims an order for rectification of the registration to remove title No. **WEST KITUTU/BOGEKA/3950** and costs of the suit.

The Defendant filed a defence to the claim herein and she avers that she has lived on the suit portion of land since 1987 peacefully and that she had purchased the land from one Paulina Kwamboka Nyansiaboka and denies engaging in the fraud as claimed by the Plaintiff.

The suit proceed for hearing before me on 19th May, 2017 wherein the plaintiff alone testified the defendant opted not to attend the hearing of the suit despite being served with a hearing notice.

The Plaintiff in her testimony stated that she was the proprietor of a parcel of land known as **WEST KITUTU/BOGEKA/3725** and that she authorized the sub-division of the said parcel after signing the mutation forms of 7th September, 2009 subsequently to which new numbers being **WEST KITUTU/BOGEKA/3724** and **3725** were created.

The Plaintiff further stated that she obtained the requisite consent to sub-divide the land and subsequently the portion was registered in the name of one Esther Kerubo Obaga after she sold the parcel to her for kshs. 100,000/- and that she retained parcel No. **WEST KITUTU/BOGEKA/3724**.

The Plaintiff alleges that the Defendant herein trespassed on the suit land and she got to learn that the Defendant acquired **WEST KITUTU/BOGEKA/3950** which she is not aware about it and on inquiry at the lands office she was shown and given copies of her mutations that were used to prepare the title.

The plaintiff has beseeched the court to cancel the title that was obtained by the Defendant and the land reverts to her. She has also reiterated the prayers in the plaint and costs.

I have considered the pleadings and the evidence on record. The Defendant has not called any evidence to rebut the evidence of the plaintiff.

From the evidence of the plaint I don't see any evidence that the plaintiff sold the suit land to the defendant nor did she sign the mutations which were used by the Defendant to obtain title, however the defendant presently is the registered owner of the parcel of land known as **KITUTU/BOGEKA/3950** and for me to be able to grant the order sought I must be satisfied that the plaintiff has met the provisions of the Land Registration Act where the challenge to title can only be made where

a. On the ground of fraud or misrepresentation

b. Where the certificate has been acquired illegally, uprocedurally or through corrupt scheme.

From the above it is instructive to note that the law places strict rules and circumstances where title to land can be challenged.

From the testimony of the plaintiff and documents produced before me that the defendant had obtained the title to land by way of fraud and/or through unlawful schemes is not in doubt.

The Plaintiff has met the requirements of section 26 (1) (b) and has thus proved her case on a balance of probabilities and as such the plaintiff cases succeeds accordingly and I order as follows:-

i. An order is hereby issued to the registrar of titles for the rectification of the register and remove title No. WEST KITUTU/BOGEKA/3950 and have the same cancelled

ii. Costs of the suit.

It is so ordered.

DATED, SIGNED and DELIVERED in open court at **KISII** on this **19th** day of **October, 2017**.

Mohammed Noor Kullow

Judge

In the presence of:-