



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.65 OF 2016

ENOCK ONJURO OGUT.....1ST PLAINTIFF

MARY MAGARE OGUT.....2ND PLAINTIFF

(suing as Administrators of the estate of deceased STEPHANO OGUT AWALA)

VERSUS

PATRISIA OBONG OGUT.....1ST DEFENDANT

LAND REGISTRAR, KISUMU LAND REGISTRY.....2ND DEFENDANT

JUDGMENT

1. **Enock Onjuru Ogut and Mary Magare Ogut**, the 1st and 2nd Plaintiff respectively, suing as the administrators of the estate of the deceased, Stephano Ogut Awala, filed this suit vide the plaint dated 29th March 2016 against Patrisia Obong Ogut and Land Registrar Kisumu, the 1st and 2nd Defendants respectively, seeking for the following prayers;

“a) A declaration that the transfer and subsequent assurance (sic) of a title deed to the 1st Defendant by the 2nd Defendant for land parcel **No.Kisumu/Reru/830** is wholly illegal, irregular, fraudulent and cancellation of the title deed issued on the 22/11/2012 to the 1st Defendant.

b) An order compelling the 2nd Defendant to revoke the title issued to the 1st Defendant on the 22/11/2012 together with entries in the number 2 & 3 in the green card to the land parcel **No.Kisumu/Reru/830**.

c) Costs of the suit together with any other relief the court would deem just and expedient to grant in the circumstances.”

The Plaintiffs inter alia avers that the said land was registered in the name of the deceased who died on 1/4/1991 and was the father and husband to the 1st and 2nd Plaintiff respectively. That the Plaintiffs learnt on conducting a search at the land registry learnt that the 1st Defendant had illegally, wrongfully and fraudulently transferred the land to her name on 22nd November 2012 to the exclusion of other beneficiaries without complying with due process of succession.

2. The Plaintiff claim is denied by the 1st Defendant through her statement of defence dated 2nd June 2016. The 1st Defendant avers that the deceased had shared the suit land among his six wives but died

before formal subdivision and transfer. That the other widows had agreed that the land be registered in her name before subdivision and transfer to the respective beneficiaries.

3. The Plaintiffs claim is also denied by the 2nd Defendant through their statement of defence dated 16th August 2016 which they among others avers that the transfer effected in favour of the 1st Defendant was done within the law and procedures.

4. That hearing of this suit took place on 23rd May 2017 when the Plaintiffs testified as PW1 and PW2 respectively. They also called Harun Oyugi and Hosea Odak Awalla who testified as PW3 and PW4. The 1st Defendant testified as DW1 and called Phelgona Otwal Ogut who testified as DW2. The counsel for the 2nd Defendant closed the case without calling any witness.

5. The Plaintiffs case is that Land parcel **Kisumu/Reru/830** was registered in the name of **Stephano Ogut Awala** who died on the 2nd April 1991. That in 2016, they learnt that the 1st Defendant, who was one of the widows of the deceased, had transferred the land to her name without obtaining the grant of letters administration and without the knowledge of the other beneficiaries. That on conducting a search at the land Registry and obtaining a copy of the register, they confirmed that the land had been transferred to the 1st Defendant on the 22nd November

2012 through transfer and title issued. The Plaintiffs obtained a Limited Grant of Letters of Administration Ad litem in Kisumu C.M. Succession Cause No.13 of 2016 on the 31st March 2016 and filed this suit on the 11th April 2016.

6. The 1st Defendant case is that the deceased who was her husband bequeathed her and the five other co-wives the said land before his death in 1991. That in 2009, the 1st Plaintiff set up a home on a portion of the land while the 2nd Plaintiff gave her portion of the land to her sons. That later she learnt that the Plaintiffs wanted to take the whole land. The 1st Defendant said she contacted the Land Registrar's office and was advised to have the Land registered in the name of one of the widows and share it later. That on briefing the other widows what she had been advised, the 2nd Plaintiff, who is one of the widows, declined to discuss the matter saying she had already given out her share while the other four agreed that she be registered with the land. She conceded that she did not obtain a grant from the succession court before transferring the land to her name.

7. The following are the issues for the determination of the court;

- a) Whether the registration of the said land in the name of the 1st Defendant was legally, regularly and procedurally done.
- b) Whether the title for the said land should be reverted to the name of Stephano Ogut Awala.
- c) Who pays the costs.

8. The court has carefully considered the pleadings filed, evidence by the Plaintiffs, 1st Defendant and their respective witnesses and come to the following conclusions;

- a) That from the evidence adduced by the Plaintiffs and 1st Defendant, it is apparent that the 1st Defendant got registered as proprietor of the suit land on the 22nd November 2012 without filing a succession cause in respect of the estate of Stephano Ogut Awala who was the registered proprietor. That as the said Stephano Ogutu Awala had died in 1991, he could not have been the one who transferred the suit land to the 1st Defendant on the 22nd November 2012, which is about 21 years later.
- b) That the transfer of the said land to 1st Defendant must have been done through the collusion of

the 2nd Defendant while knowing well that no grant of administration in accordance with the **Law of Succession Act Chapter 160 of Laws of Kenya** had been obtained and confirmed.

c) That in view of the foregoing, the registration of the suit land to the name of the 1st Defendant was irregularly, illegally and unprocedurally obtained and the title she obtained is not protected under **Article 40** of the constitution and did not confer upon her absolute and indefeasible title under **Section 26 (1)** of the Land Registration Act No.3 of 2012. That the 1st Defendant's title to the said land is therefore hereby impugned.

9. That the Plaintiffs have proved their case against the Defendants on a balance of probabilities and judgment is hereby entered in their favour as follows:

a) That a declaration is hereby issued that the registration of land parcel **Kisumu/Reru/830** in the name of the 1st Defendant, and the issuance of title deed in her name by the 2nd Defendant was illegal, irregular, unprocedural and fraudulently done.

b) That the 2nd Defendant is hereby directed to cancel the entries numbers 2 and 3 of 22nd November 2012 in the register of parcel **Kisumu/Reru/830** and revert the land ownership to Stephano Ogutu Awala, deceased, to enable the beneficiaries move the succession court for its administration and distribution in accordance with the **Law of Succession Act Chapter 160 of the Laws of Kenya**.

c) The Plaintiffs be paid costs of this suit by the Defendants.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 11TH DAY OF OCTOBER 2017

In presence of;

Plaintiff s 1st Present

Defendants 1st Present

Counsel None

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

11/10/2017

11/10/2017

S.M. Kibunja Judge

Court assistant Oyugi

1st Defendant present

1st Plaintiff present

Order: The judgment dated and delivered in open court in presence of the 1st Plaintiff and 1st Defendant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

11/10/2017