



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

ENVIRONMENT AND LAND CASE NO. 134 OF 2015.

ABDILLAHI HASSAN ABDIRIHAMAN

MOHAMED JAMAL MABONGA

MOHAMED IMBIAKHA SUDI (Suing as the registered trustees of

WEBUYE JAMIA MOSQUE.....Plaintiffs

Versus.

ALI WAZIRI ABUBAKARI

MOHAMED AZIZ MUDENGE

YUSUF KAKAI (Sued in their capacity as the patrons of **WEBUYE**

MUSLIM COMMUNITY SHOP.....DEFENDANTS

JUDGMENT.

[1] The Plaintiffs herein filed a suit on 21/11/2015 and prayed for the following orders;

- (a) *A declaration that the Land Parcel Number Webuye Municipality/Block 1/23 measuring 0.1110 Hactares or thereabout belongs to Webuye Jamia Mosque and NOT Webuye Muslim Community Shop.*
- (b) *An order Deleting Entry Number Three (3) and Four (4) respecting register of L.R. Number Webuye Municipality/Block 1/23.*
- (c) *Permanent injunction restraining the Defendants whether by themselves, servants and or agents from interfering and or in any other way whatsoever dealing with land parcel number Webuye Municipality/Block 1/23.*
- (d) *General Damages and Mesne profits and refund of all the Rent collected from time of unlawful occupation to the time of surrender of the premises.*
- (e) *Cost of the suit.*
- (f) *Interest at court rates.*

[2] In the plaintiffs pleadings they stated that they are the registered trustees of Webuye Jamia Mosque a

duly registered Society under Certificate of Registration No. 10254. They allege that they were allotted Land Parcel Number 7996/53 situated at Webuye Municipality measuring approximately 0.1110 Hactares for a period of 99 years from 1st December, 2000. The purpose of the allotment was for religious purposes and ancilliary offices and stores. They aver that they accepted the conditions of the allotment on behalf of Jamia Mosque and paid Kshs.3,602/= as Stand Premium. Whereupon, the Commissioner of Lands forwarded to them a lease dated 3rd of December, 2001 with the names of Bwanakai Abubakar, Abdul Rahman Habib and Ismael Mohammed as trustees of Webuye Jamia Mosque and the Lease was issued on 2nd July, 2002.

[3] The plaintiffs aver that on 4th March, 2010 the defendants without the consent of the Trustees of Webuye Jamia Mosque aforesaid, fraudulently transferred the said land to themselves as Patrons of Webuye Muslim Community Shop. That pursuant to that fraud the plaintiffs made a complaint to the police where Criminal Proceedings were preferred against one of the Patrons of Webuye Muslim Community Shop one Ali Abubakar Waziri in Webuye Resident Magistrate's Court in Criminal Case No. 60 of 2012. He was charged with Four counts of Forgery Contrary to Section 350 (1) (2) of the Penal Code. He was convicted with all Four Counts and fined Kshs.20,000/= for each Count and he proceeded to pay the Kshs.80,000/= fine.

[4] The 1st defendant filed his own defence on 9th March, 2016. In his defence he argued that the defendants were issued with land Parcel Webuye Municipality/Block 1/23 and after due diligence that followed and that the 1st allotment of the suit land was done on 22nd day of November, 1976 to Webuye Muslim Community and that the lease issued to the plaintiffs on 2nd July, 2002 was cancelled on 4th March, 2010. He said that the said certificate of lease was degazetted on 30th October, 2015. He alleged that the lease that was degazetted was obtained fraudulently in 2003 through one R. Oduory Sanya in collaboration with the plaintiffs and was backdated to 2/07/2002 to match the mastercard opened by one BS Alusiola on 2/07/2002. He also argued that the plaintiffs hold no proprietary interest in the suit property and that they were not bona fide Members of Webuye Jamia Mosque for the reason of having failed to pay the contribution subscription charges. A further statement of defence was filed for all the three defendants by JB Otsiula and Associates Advocates on 9th March, 2016 generally denying the claim in the plaint.

[5] In his Evidence Abdlahi Hassan Abdulrahman on oath stated that Webuye Jamiah Mosque was registered in 1980. He produced the original copy of the certificate of registration. He said that they applied for land in the County Council of Bungoma for a Mosque and a Nursery School and they were given the land as a Muslim Community. He produced documents Exhibit No. 2(a) (b). He said that they therefore built a Mosque and a Nursery and a Primary School which they have handed over to the Government. He said they were allocated the same on 7/11/2000. A copy of the letter of allotment was produced as PExh. 3. The witness said that the allotment demanded Kshs.6,302/= which was paid on 24/1/2001 a receipt for the same was produced as PExh. 4. He said that after such payment they got a letter dated 3/5/2002 to come to Bungoma Land Registration office to get their lease. The letter was produced as PExh. 5. The lease obtained was produced as PExh. 6. The same was in the names of the Lanakai Abubakar Abdulraham Habib and Ismael Mohammed as trustees of Jamia Mosque Webuye. The original lease was produced in Court as PExh. 7 and a certified copy of the register were also produced in Court.

[6] The witness gave evidence that they noticed that their lease document was altered on 2011. That the same had been changed to the names of Wazir Abubakar, Ali Mohammed, Aziz Mundenge and Shaban Ali Okumu. The changes were made on 4/3/2010. The new registered owners were registered as Patrons of Webuye Muslim Community Shop. The search for those changes was produced as PExh. 9. The witness said that they made a report to the Kenya Police and Ali Wazir Abubakar was arrested and charged in Webuye Principal Magistrate's Court in Criminal Case No. 60 of 2012 with four Counts of forgery and was convicted with all four Counts and fined a total of Kshs.80,000/= which he paid.

[7] The witness said that they have never surrendered their title or transferred their land to anyone. Further that one of the trustees Abdulrahman Habib Awath died on 19/8/2001 and he could not have

transferred the land. Further that there was a restriction on the title that had not been discharged and it was not possible to transfer that Land.

[8] The 1st defendant in his evidence for the Webuye Muslim Community Shop, said that he was the Chairman of the Muslim Community Shop appointed in 1994. He said that they were registered as trustees in 1999. He admitted that a lease was issued in the name of Jamia Mosque. That he stayed with the certificate of lease for 8 years. He said that he surrendered the same to Bungoma Land Registry on 4/3/2010. He said that the title was changed from Bwanakai Abubarkar and 2 others to Mohammed Aziz, Shaban Ali and Ali Wazir Abubarkari as trustees of Webuye Muslim Community Shop. Reasoning being that there was a shop therein that was supposed to pay the accruing rates. The witness said that he did not consult the previous registered owners. He had admitted being charged with forgery and the conviction thereof and admitted having paid a fine of Kshs.80,000/= but said the appeal was pending in the High Court at Bungoma. The witness said that he had obtained no consent from anyone to the said change of name. He produced no certificate of registration of the Jamia Muslim Community Shop.

[9] There is no doubt in this matter that the plaintiffs were issued with a certificate of title of Webuye Municipality 1/23 as trustees of the Webuye Jamia Mosque after due process. They produced all the documents that were issued to them as a consequence of that process. They have stated categorically that they have not consented to the transfer of their title to Jamia Muslim Community Shop or anyone else. Equally they have not transferred it to anyone else or at all. That indeed, that was not possible because two of its trustees are dead and that there was an inhibition on the title which has never been removed to allow any kind of transfer.

[10] That 1st respondent himself admitted that he stayed with original title for 8 years before he decided to illegally change the same from Webuye Jamia Mosque to Webuye Jamia Mosque Community Shop. He said that he did this so that he could raise income from the shop constructed therein to raise money to pay the rates. He admitted that there was no consent from the plaintiff. He equally did not obtain a consent either from the Commissioner of Lands. This obviously made the transfer from Webuye Jamia Mosque to Webuye Jamia Mosque Community Shop illegal. The transfer was therefore a nullity. The 1st respondent has already been convicted with four Counts of fraud arising out of that transfer and was convicted with all the four Counts of fraud and fined a total of Kshs.80,000/=. This is a further confirmation that the alleged transfer was illegal and unlawful.

[11] There were no documents placed before the Court to show that the Webuye Jamia Community Shop was a registered organization capable of owning and/or capable of being registered as owner of land. There was equally no proof that the respondents are registered anywhere as trustees of Webuye Jamia Mosque Community Shop. As a consequence thereof, the plaintiffs have proved their claim. However, there was no evidence placed before the court that the plaintiffs suffered any loss or damage. There being no such proof no order can be made in that regard. In the Final analysis I allow the Plaintiffs prayers in paragraph (a) (b) and (c) in their plaint. The plaintiffs shall also have the costs of the suit.

It is so ordered.

Judgment read in Open Court in the presence of Mr. Imende.

Dated at Bungoma this 7th day of December, 2017.

S. MUKUNYA

JUDGE.

In the presence of:

Coram: Hon. S. Mukunya (Judge)

Joy: Court Assistant

Mr. Imende for the Defendant

Mr. Makokha: For the Plaintiff - Absent