



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

CIVIL SUIT NO. 973 OF 2012

SUSAN SAMBAI CHOGE.....1ST PLAINTIFF

ABRAHAM CHOGE.....2ND PLAINTIFF

NELSON KIPYEGO CHOGE.....3RD PLAINTIFF

ELPHAS KIPCHIRCHIR CHOGE.....4TH PLAINTIFF

ELIZABETH JEPKORIR CHOGE.....5TH PLAINTIFF

VERSUS

THE CHIEF LAND REGISTRAR.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

JUDGMENT

Susan Sambai Choge, Abraham Choge, Nelson Kipyego Choge, Elphas Kipchirchir Choge and Elizabeth Jepkorir Choge have sued the Chief Land Registrar and Attorney General claiming that the 1st plaintiff is the registered proprietor of land parcels L.R. Nos. Plateau/Kipkabus Block 4 (Lelmokwo) 22 and Plateau/Kipkabus Block 4(Lelmokwo) 29. The 2nd plaintiff is the registered proprietor of land parcel L.R. Nos Plateau/Kipkabus Block 4(Lelmokwo)23 and Plateau/Kipkabus Block 4(Lelmokwo)30. That the 2nd, 3rd and 4th plaintiffs are the joint registered owners of land parcel L.R. No. Plateau/Kipkabus Block 4(Lelmokwo) 24. The 4th plaintiff is the registered proprietor of land Parcels L.R. Nos. Plateau/Kipkabus Block 4 (Lelmokwo) 25 and Plateau/Kipkabus Block 4(Lelmokwo) 28. The 5th plaintiff is the registered proprietor of land parcel L.R. No. Plateau/Kipkabus Block 4(Lelmokwo) 27.

That without complying with the provisions of Sections 136, 137 and 138 of the Registered Land Act, Chapter 300 Laws of Kenya the District Land Registrar, Eldoret secretly unjustifiably and unlawfully imposed restrictions on land parcel L.R. Nos. Plateau/Kipkabus Block 4 (Lelmokwo) 22, Plateau/Kipkabus Block 4(Lelmokwo) 29, Plateau/Kipkabus Block 4 (Lelmokwo) 23, Plateau/Kipkabus Block 4 (Lelmokwo) 30, Plateau/Kipkabus Block 4 (Lelmokwo) 24, Plateau/Kipkabus Block 4(Lelmokwo) 27, Plateau/Kipkabus Block 4 (Lelmokwo) 25 and Plateau/Kipkabus Block 4 (Lelmokwo) 28.

The plaintiffs have demanded that the restrictions imposed against their titles be removed or that they be given a hearing regarding the same but the Uasin Gishu District Land Registrar has failed and/or refused to do so. The plaintiffs have been unfairly and unlawfully denied the opportunity to raise money to carry out their farming activities using the said lands as security.

The plaintiffs pray for orders that a declaration that the restrictions imposed on their said parcels of land are oppressive, unjustified and unlawful and an order directing the first defendant to remove the said restrictions. Damages occasioned by the said restrictions and costs of this suit.

The defendant filed amended defence stating that the 1st defendant placed restrictions on the suit lands in or about year 2005 pursuant to the provisions of the Registered Land Act Cap. 300 (now repealed). The suit lands were originally part of L.R. No. 5798 Lelmokwo measuring 1303 acres prior to conversion and subdivision which land was subdivided into thirteen plots following conversion from the legal regime of the Registration of Titles Act (now repealed) to the legal regime of Registered Land Act (repealed).

The head title was surrendered to the Commissioner of Lands by one Jackson Kibor and subsequently, the process of conversion was done resulting into the registration of Plateau/Kipkabus/Block 4(Lelmokwo) vide the authority granted by the 1st defendant on 2.3.2000 following the surrender of the head title and registration of surrender. That pursuant to the subdivision, complaints were lodged with the 1st defendant by Jackson Kibor and other members of the land buying company requesting the 1st defendant to suspend the issuance of the title deeds citing irregularities/flawed execution of the surrender document. Pursuant to the complaints received, the 1st defendant suspended the issuance of the titles and placed restrictions on all the suit lands.

That the defendants further state that pursuant to the complaints, investigations were conducted by both the 1st defendant and the Criminal investigation department consequent upon which a criminal prosecution was commenced before Chief Magistrate in **Eldoret Criminal Case No. 766 of 2000 – Republic Vs David Arap Maiyo and 3 Others**, while restrictions were lawfully placed by the 1st defendant against all the titles.

The defendants contends that the District Land Registrar, Eldoret placed the restriction on the suit parcels of land lawfully and with justification and within the ambit of the law and in particular the Registered Land Act Cap. 300 Laws of Kenya (repealed). The defendant reiterates that pursuant to the complaints received by the 1st defendant and the investigations, the defendant conducted a hearing on the issue of the restrictions pursuant to the provisions of the Act (now repealed) with all the parties including the plaintiffs and thereafter made a ruling into the issues before the parties.

In the reply to amended defence, the plaintiff denies that pursuant to the subdivision complaints were lodged with the 1st defendant by Jackson Kibor and other members of the land buying company requesting the 1st defendant to suspend issuance of the title deeds citing irregularities/flawed execution of the surrender document and further denies that pursuant to the complaints, investigations were conducted by both the 1st defendant and the Criminal Investigation Department consequent upon which a Criminal Case No. 766 of 2000 – Republic Vs David Arap Maiyo & 3 Others was lodged. The plaintiff avers that the restrictions were unlawfully placed on the land and not within the ambit of the law. The plaintiff avers that the 1st defendant did not have jurisdiction to conduct a hearing on the issue of the restriction and the ruling made thereof did not have any force of the law.

When the matter came up for hearing on 16.3.2015, **Mr. Abraham Kiprop Choge** testified on behalf of the other plaintiffs and stated he is the registered proprietor of land parcels L.R. Nos. Plateau/Kipkabus Block 4 (Lelmokwo) 22 and Plateau/Kipkabus Block 4 (Lelmokwo) 29 whilst the 2nd Plaintiff is the registered proprietor of land parcel L.R. Nos. Plateau/Kipkabus Block 4 (Lelmokwo) 23 and Plateau/Kipkabus Block 4 (Lelmokwo) 30. The 2nd, 3rd and 4th Plaintiffs are the joint registered owners of land parcel L.R. No. Plateau/Kipkabus Block 4 (Lelmokwo) 24. While the 4th plaintiff is the registered proprietor of land parcels L.R. Nos. Plateau/Kipkabus Block 4 (Lelmokwo) 25 and Plateau/Kipkabus Block 4 (Lelmokwo) 28. The 5th Plaintiff is the registered proprietor of land parcel L.R. No. Plateau/Kipkabus Block 4 (Lelmokwo) 27. That without complying with the provisions of sections 136, 137 and 138 of the Registered Land Act, the District Land Registrar, Eldoret secretly, unjustifiably and unlawfully imposed restrictions on the land parcels. That they have been unfairly and unlawfully denied the opportunity to raise money to carry out farming activities using the lands as security. They pray for a declaration that the restrictions imposed on the parcels of land are oppressive, unjustified and unlawful and for an order directing the 1st defendant to remove the said restrictions. He produced the copies of the

titles, certificates of official search and notice of intention to sue the Attorney General, the letter forwarding the notice. The Attorney General responded. He prays that the restrictions be removed. They are unable to get loans. He believes that Mr Kibor cannot stop them from utilizing land.

On cross examination, the plaintiff states that the land was a subdivision of L. R. 5798, which was 1303 acres which was subdivided and given to many people. Mr. Kibor and other people complained to the Land Registrar that he had the original title. He does not know whether there is a surrender.

On 24.9.2015, the defence called their witness, the County Land Registrar, Mrs. **Dorothy Chepkogei Leting** who stated that before conversion the land in dispute as LR 57/98 measuring 1303 acres which was owned by lands ltd. The land was purchased by Jackson Kibor but the surrender was not properly done according to MR Kibor and therefore they petitioned the registrar for a restriction. The restriction was entered and thereafter the land registrar heard the parties and decided that the restriction would remain in place.

The plaintiffs submit that they have proved their case on a balance of probability as required by law. They argue that the defendants secretly, unjustifiably and unlawfully imposed restrictions on the suit land in breach of section 136 of the Registered Land Act (repealed). They further argue that the Registrar purported to hear them after placing restrictions notice.

The defendants submit that the 1st defendant conducted inquiries and heard the applicant, Jackson Kiprotich Kibor as evidenced by defence exhibits No. 1 and 2 so as to prevent fraudulent dealings in respect of the surrender document. Moreover, that the Registrar has sufficient case to place the restrictions as he did.

This court finds that the right to be heard is so cardinal that it can not be wished away and that it is not proper in law to make a decision and to purport to hear the parties thereafter. **Section 136 of the Registered Land Act (repealed)** envisaged all parties interested in the outcome of the decision to place restriction on the parcel of land to be heard before the making of the said decision. This section provided that for the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, after directing such inquiries to be made and notices to be served and hearing such persons as he thinks fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge. Subsection (2) provides that a restriction may be expressed to endure for a particular period; or until the occurrence of a particular event; or until the making of a further order, and may prohibit or restrict all dealings or only such dealings as do not comply with specified conditions, and the restriction shall be registered in the appropriate register.

Section 76(1) of the Land Registration Act No. 3 of 2012 which is a replica of section 136 of the Registered Land Act provides that the foregoing provision envisage the hearing of the persons interested before making a decision but not making a decision to place a restriction on the title before hearing the parties. I do find that the decision by the 1st defendant is tainted with procedural impropriety as it was made without affording the plaintiffs a hearing and therefore, illegal.

The upshot of the above is that the plaintiffs' suit succeeds and therefore the court issues a declaration that the restrictions imposed on their said parcels of land are oppressive, unjustified and unlawful and the same are hereby removed.

DATED AND DELIVERED AT ELDORET THIS 15TH DAY OF APRIL, 2016.

ANTONY OMBWAYO

JUDGE