



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KERICHO

ENVIRONMENT AND LAND CASE NO.33 OF 2014

SAMUEL K. CHERUIYOT.....PLAINTIFF

VERSUS

MUSA K. CHERUIYOT..... DEFENDANT

JUDGMENT

(Plaintiff alleging to be entitled to certain land; plaintiff claiming that the land is registered in the name of his brother the defendant and that he holds it in trust for him; plaintiff pleading fraud in subdivision and procurement of land control board consent; no evidence led as to who is the registered proprietor of the land; cannot be assumed that it is the defendant in absence of proof; no evidence led on any subdivision or consent of land control board; no fraud proved; plaintiff's interest not proved by any evidence; plaintiff's case dismissed; no orders as to costs as defendant did not defend suit)

This suit was commenced by way of plaint filed on 16 July 2014. Despite being served with the summons, the defendant did not enter appearance. The pleadings that I have are therefore only those filed by the plaintiff. In the plaint, the plaintiff has pleaded that in the year 1971, he acquired the land parcel Kericho/Kapsorok/556 when he was a minor. It is pleaded that in the year 1989, the plaintiff's father subdivided his land among his five sons including the defendant and the defendant fraudulently obtained the title for the portion belonging to the plaintiff. The following particulars of fraud are pleaded against the defendant :-

- (i) Causing to be registered as the proprietor of the said subject parcel of land without disclosing the plaintiff's interest.
- (ii) Causing the subdivision of the said subject parcel of land and transferring the resultant parcels thereof unto himself.
- (iii) Obtaining the consent of the Land Control Board by way of false misrepresentation.

In the suit the plaintiff has sought the following orders :-

- (a) The land title Kericho/Kapsorok/556 registered in the name of the defendant be cancelled and a new one thereof be issued in the name of the plaintiff.
- (b) Costs of the suit and interest.
- (c) Any other relief the court may deem fit and just to grant.

The plaintiff testified as the sole witness. He stated inter alia that the land in issue was initially registered in the name of his father and his father held the same in trust for him. He obtained the land before demarcation. In the year 1989, his brother, the defendant, changed the title from their father to himself. His father died in the year 1985 (although he later changed this to say 1995) and succession was done before the change of names in the title. He stated that his father had given this land to his 2nd wife while he was still alive. He and the defendant are sons of the 1st wife. He challenged his father's decision before a panel of elders in the year 1990. His father was instructed to demolish the houses of his younger wife and move them to his father's ancestral land. He did so and the land remained unoccupied but in the name of his brother. He asked his brother (the defendant) to change the title into his name (the plaintiff's) but the defendant refused. He again reported to the elders who asked the defendant to leave. He produced the minutes of meetings of elders held on 16 August 1978 and 16 May 2000.

With the above evidence, the plaintiff closed his case. Mr. Orina for the plaintiff opted not make any submissions and left the matter to me.

I have considered the pleadings and the evidence of the plaintiff. In his pleadings, the plaintiff has asserted that he deserves to be the owner of the land parcel No. Kericho/Kapsorok/556. It is his case that the defendant procured registration of this land parcel by way of fraud. I regret to inform the plaintiff that his case must fail and I will explain why in the reasons that follow.

For starters, the plaintiff did not produce any document to show who the registered proprietor of the land that he claims is. I cannot assume that the land is registered in the name of the defendant without proof of this and proof needed to come in the production of the title deed or other document of title showing that the land is registered in the name of the defendant.

Secondly, it is the position of the plaintiff that the defendant procured registration of the title into his name by way of fraud. Forgetting for a moment that there is absolutely no proof that the defendant is registered as proprietor of the suit land, I have not been given any evidence of fraud. There was mention of a consent of the land control board but the plaintiff referred me to none. Neither was I shown any evidence of any subdivision of land and any registration of proprietorship after the alleged subdivision. None of the particulars of fraud pleaded against the defendant have been proved.

Thirdly, the plaintiff has not shown to me any evidence that he is in any way entitled to the suit land. He stated that he acquired it before demarcation but if this is the position, I fail to understand why he was not registered as the proprietor thereof. He mentioned that he was a minor at the time, but I have no idea who was the first registered proprietor so that it can be deduced whether the circumstances of the registration lead one to the conclusion that the registration was to be in trust for the plaintiff.

I have looked at the minutes said to be of elders in the years 1978 and 2000. These say nothing about the plaintiff's interest and why he deserves to be owner of the land. The first set of minutes only state that the land (which land is not even specified and one cannot tell whether it is the same one in issue here) be given to Samwel Kiprop (assuming to be the plaintiff). The second set of minutes state that the land be transferred back from Musa Cheruiyot to Samwel Cheruiyot. Such decisions do not bind this court. The minutes have absolutely no indication as to why it is thought that the plaintiff ought to be proprietor of the suit land. They mean nothing to me.

It was incumbent upon the plaintiff to demonstrate who the owner of the land is, and why such owner ought not to continue being registered as proprietor of the land. The plaintiff also needed to demonstrate clearly, his interest in the land and why he believes he should be the registered proprietor in place of whoever is now registered as proprietor. The plaintiff has hopelessly failed to prove these crucial matters.

I have no option but to dismiss this case. But since the defendant did not bother to waste his time defending it, I make no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 28TH DAY OF OCTOBER, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

In the presence of:-

Mr. Joshua Mutai holding brief for Ms. Chelimo for the Plaintiff

No Appearance for Defendant

G. Wambany Court assistant