



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT KISII**

**CASE NO. 551 OF 2015**

**PATRICIA NYANGATE ONGIRI .....PLAINTIFF**

**VERSUS**

**PACIFICA GESARE KEARI .....1<sup>ST</sup> DEFENDANT**

**ANN BARONGO BOSIRE .....2<sup>ND</sup> DEFENDANT**

**IBRAHIM ONGENDI GECHOCHO .....3<sup>RD</sup> DEFENDANT**

**ROGERS ATEKA MAYAKA .....4<sup>TH</sup> DEFENDANT**

**PROTAS ONSARIGO OCHORA .....5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff, Patricia Nyagate Ongiri on 26<sup>th</sup> October 2015 obtained Letters of Administration Ad Litem to the Estate of Kiari Anyuga (deceased) limited for the purpose of filing suit. On 14<sup>th</sup> October 2015 the plaintiff instituted the instant suit by way of plaint against the defendants. By the plaint the plaintiff avers that the late Kiari Anyuga was the registered owner of land parcel **West Kitutu/Bogeka/636**. The plaintiff further avers that the defendants after the death of the said Kiari Anyuga fraudulently and without any succession proceedings in respect of the deceased estate being undertaken caused the deceased land parcel **West Kitutu/Bogeka/636** to be subdivided into land parcels **West Kitutu/Bogeka/4858, 4859, 4860, 4861, 4862, 4863, 4864** and **4865**. The defendants thereafter caused the various subtitles to be transferred to their respective individual names again without any succession proceedings in regard to the estate of the deceased. The plaintiff contends the subdivision and the transfers were unlawful, fraudulent and illegal as they were undertaken without the due process of succession in respect of the deceased estate being undertaken. Consequently the plaintiff prays for the cancellation of the illegal subdivision and the subtitles and for the restoration of the original title **West Kitutu/Bogeka/636** in the name of the deceased to enable appropriate succession proceedings to be undertaken.

2. The defendants were served with summons to enter appearance as per the filed affidavit of service sworn by one Isaiah Miruka on 18<sup>th</sup> February 2016. The defendants did not enter any appearance and did not file any defence. The matter was fixed for mention for directions on 20<sup>th</sup> July 2016 and even though the defendants were served with the mention notice, they did not appear. The court gave directions that matter be fixed for hearing. The defendants though served with a hearing notice did not attend the court

on 20<sup>th</sup> September 2016 when the suit was fixed for hearing and the plaintiff proceeded with the hearing ex parte by way of formal proof.

3. The plaintiff testified that she is the daughter of Kiari Anyunga who died in the year 2000 and produced a death certificate dated 6<sup>th</sup> June 2012 as PEx. 1 which shows that Kiari Anyuga died on 10<sup>th</sup> July 2000. The plaintiff stated she knew the defendants and that the 1<sup>st</sup> defendant was her mother. The plaintiff testified that her late father owned and was the registered owner of land parcel **West Kitutu/Bogeka/636**. The plaintiff produced the abstract of title (green card) of land parcel **West Kitutu/Bogeka/636** as PEx. 2 which showed that Kiari Anyuga (deceased) was registered as owner on 5<sup>th</sup> August, 1976. The plaintiff testified her late father's land was unlawfully subdivided in January, 2014 into 8 subtitles without any succession proceedings having been taken. The plaintiff produced as PEx. 7 the copy of the mutation used for the subdivision of the land.

4. The plaintiff further produced certificates of official searches which showed the resultant subtitles were registered in the defendants names as follows:-

**(i) West Kitutu/Bogeka/4858 in the name of Pacifika Gesare Keri.**

**(ii) West Kitutu/Bogeka/4859 in the name of Pacifika Gesare Keri.**

**(iii) West Kitutu/Bogeka/4860 in the name of Ann Barongo Bosire.**

**(iv) West Kitutu/Bogeka/4861 in the name of Ibrahim Ongendi Gechocho.**

**(v) West Kitutu/Bogeka/4862 in the name of Rogers Ateka Mayaka.**

**(vi) West Kitutu/Bogeka/4864 in the name of Protas Onsario Ochora.**

**(vii) West Kitutu/Bogeka/4865 in the name of Pacifika Gesare Kiari.**

5. The plaintiff maintained no succession proceedings were undertaken for the estate of her late father insisting that as a beneficiary she would have been involved in any succession proceedings. The plaintiff testified that she reported to the area chief that her father's land had unlawfully and illegally been subdivided without going through any succession proceedings. The chief issued a letter to the land registrar Kisii confirming no succession relating to the deceased estate had been processed and that the plaintiff was a lawful beneficiary of the estate. The chief's letters dated 10<sup>th</sup> September 2014 and 15<sup>th</sup> September 2014 were produce as **PEx. 5 "a" and "b"**.

6. I have carefully considered and evaluated the plaintiff's documents together with documents tendered in evidence, which evidence and documents have not been challenged in any manner, and I am satisfied that the plaintiff was the daughter of the deceased and was therefore a beneficiary of the deceased estate. The plaintiff's evidence that no succession proceedings had been taken before the deceased land parcel **West Kitutu/Bogeka/636** was subdivided has not been contraverted by any evidence. She is the daughter of the deceased and would have been involved if any succession was undertaken. The letters from the chief affirm that no succession was done. The abstract of title produced in evidence does not indicate on what basis the 1<sup>st</sup> defendant got to be registered as owner of the suit property on 8<sup>th</sup> September 2011 yet the deceased who was the registered owner died on 10<sup>th</sup> July 2000 as per the certificate of death tendered in evidence. If it was a transfer through succession the register would have shown the transfer was by way of transmission (Form RL7).

7. In the circumstances I am persuaded and satisfied that the suit land owned by the deceased was unlawfully and illegally registered in the 1<sup>st</sup> defendant's name without following the due process under the Law of Succession Act, Cap 160 Laws of Kenya. The subsequent subdivision and consequent transfer of the subtitles to the defendants was a nullity and accordingly the titles held by the defendants are null and void. I am therefore satisfied the plaintiff has proved her case on a balance of probabilities and I

hereby enter judgment in favour of the plaintiff on the following terms:-

**1. That the titles held by the defendants in regard to land parcels West Kitutu/Bogeka/4858, 4859, 4860, 4861, 4862, 4863, 4864 and 4865 are declared null and void and are hereby revoked and cancelled.**

**2. The land registrar to restore land parcel West Kitutu/Bogeka/636 in the name of Kiari Anyuga (deceased) pending appropriate succession proceedings being undertaken by the beneficiaries.**

**3. The costs of the suit awarded to the plaintiff.**

**Judgment dated, signed and delivered at Kisii this 25<sup>th</sup> day of November, 2016.**

**J. M. MUTUNGI**

**JUDGE**

**In the presence of:**

Ms. Nyawencha for the plaintiff

N/A for the 1<sup>st</sup> to 5<sup>th</sup> defendants

Mr. Ngare Court Assistant

**J. M. MUTUNGI**

**JUDGE**