



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

HCCC NO. 96 OF 2008

ADIL MOHAMED ALI SAID (*suing as the Administrator of the Estate of*

MOHAMED ALI SAID EL-MANDRY (DECEASED).....PLAINTIFF

=VERSUS=

1. FEISAL MOHAMED ALI

2. GREGORY SCOTT WINDELL

3. BOBBY BECHTER.....DEFENDANTS

J U D G M E N T

Introduction:

1. In the Plaint dated 22nd November, 2008, the Plaintiff averred that his father died on 27th March 1984 and left behind a piece of land known as subdivision number 4 of Section IV, M.N; that on 4th July, 2008, the 1st Defendant unlawfully purported to transfer the said land to the 2nd and 3rd Defendants and that no distribution of the Estate of his late father had been sanctioned by then.

2. The Plaintiff is seeking for a declaration that the sale of the suit property by the 1st Defendant to the 2nd and 3rd Defendants was unlawful, null and void *ab initio*.

3. Although the Defendants were served with Summons to Enter Appearance and Plaint by way of substituted service, they neither entered appearance nor filed a Defence.

The Plaintiff's case:

4. The Plaintiff, PW1, informed the court that he is the legal administrator of the Estate of his late father.

5. It was the evidence of PW1 that when his father died, his step brother, the 1st Defendant, entered into a sale agreement with the 2nd and 3rd Defendants and sold to them the suit property which was registered in the name of their late father.

6. It was the evidence of PW1 that the 1st Defendant had no legal capacity to sale and transfer the suit property to the Defendant.

7. The Plaintiff's advocate filed brief submissions which I have considered.

Analysis and findings:

8. The Plaintiff produced in evidence the Certificate of Death in respect to his father. According to PEXB 1, the Plaintiff's father, Mohamed Ali El-Mandry, died on 27th March, 1984.

9. It was the Plaintiff's case that the letters of administration in respect of his father's estate have never been issued or confirmed.

10. That notwithstanding, it was the evidence of PW1 that the 1st Defendant sold to the 2nd and 3rd Defendants the suit property by virtue of an agreement dated 4th July 2008 which was produced as PEXB4.

11. Section 82 of the Law of Succession Act provides that an immovable property can only be sold once the letters of administration have been confirmed. In the absence of the letters of administration for the Estate of the late El-Mandry, the 1st Defendant did not have the legal capacity to sell the suit property to the Defendants or at all.

12. The purported sale of the suit property by the 1st Defendant to the 2nd and 3rd Defendants was therefore null and void. Consequently I find and hold that the Plaintiff has proved his case on a balance of probability.

123. For those reasons, I allow the Plaintiff's Plaint dated 22nd November 2008 as follows:-

(a) A declaration be and is hereby issued that the sale of a portion of sub-division number 4 of Section IV/MN to the 2nd and 3rd Defendants by the 1st Defendant is unlawful hence null and void *ab initio*.

(b) A permanent injunction be and is hereby issued restraining the Defendants whether by themselves, their servants, agents and or employees from constructing, transferring, disposing off, selling, alienating and or in any manner whatsoever dealing or interfering with sub-division number 4 of Section IV/MN at Shimo La Tewa.

(c) The Defendants to pay to the Plaintiff the costs of the suit.

Dated and delivered in Malindi this 26th day of **June**, 2015.

O. A. Angote

Judge