



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.111 OF 2014

PAUL MAINA KINGURU

JOHN KABUGA KINGURU (SUING AS THE

ADMINISTRATORS OF THE ESTATE OF

JANE NYAWIRA KINGURU-DECEASED).....PLAINTIFFS

=VERSUS=

1. LUCY SIALO NAYOKI TOFANI

2. KESSLER MARIA KAVEMBA

3. LAND REGISTRAR MOMBASA.....DEFENDANTS

J U D G M E N T

Introduction:

1. The Plaintiffs have averred in their Complaint dated 13th June 2014 that at all material times, the deceased was the registered owner of portion number 2056 (original No.418/13) Malindi; that in March 2006, the 1st Defendant purportedly transferred the suit property to the 2nd Defendant.
2. The Plaintiffs are seeking for an order declaring that the transfer of the suit property from the deceased to the 1st Defendant and any other subsequent transfers were fraudulent, illegal, null and void.
3. Although the Defendants were served with the Summons to Enter Appearance and the Complaint, they neither entered appearance nor filed a Defence.

The Plaintiffs' case:

4. The 1st Plaintiff, PW1, informed the court that the suit property belonged to their late father who purchased it way back in 1974 vide an Indenture dated 8th July 1974. The 1st Plaintiff produced in evidence the said Indenture and the Letters of Administration.
5. It was the evidence of PW1 that in March, 2006, he learnt that the 1st Defendant had fraudulently transferred the suit property to herself using forged documents purportedly executed by the deceased, Jane Nyawira Kaguru, who was the administrator of their late father's estate.
6. PW1 produced a report by the document examiner who confirmed that the Transfer documents

were indeed forged.

Analysis and findings:

7. PW1 produced in evidence the certificate of confirmation of a grant in respect to the Estate of the late Jane Nyawira Kinguru which shows the suit property was one of the assets that belonged to the Estate of the deceased. An Indenture registered on 18th July, 1974 in favour of the Plaintiffs' father was also produced in evidence.
8. The entries in the Certificate of Title shows that the Plaintiffs' mother was registered as the proprietor of the suit property on 2nd November 1992 before the land was subdivided and transferred to the 1st Defendant in the year 2007.
9. PW1 informed the court that the 1st Defendant was a family friend; that the 1st Defendant bought shares in parcel of land MG2 and not the suit property and that the transfer of the suit property to the 1st Defendant was fraudulent.
10. Having considered the exhibits and the evidence by PW1, I am convinced that the Plaintiffs' mother never transferred the suit property to the 1st Defendant.
11. In the circumstances, I find and hold that the Plaintiffs have proved their case on a balance of probabilities.
12. For those reasons, I allow the Plaintiffs' Plaint dated 13th June, 2014 as prayed.

Dated and delivered in Malindi this 10th day of July 2015.

O. A. Angote

Judge