



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

PETITION NO. 12 OF 2012

**IN THE MATTER OF: THE CONSTITUTION OF KENYA 2010, ARTICLE
22(1), (2), (3), (4), ARTICLE 23, 48; 40 (1); 48 & 47**

AND

IN THE MATTER OF: THE LAW OF SUCCESSION CAP 166 LAWS OF KENYA

AND

**IN THE MATTER OF: THE LAND CONTROL ACT CAP 301 LAWS OF SECTION
24, 25, 26, 27, 68, 69, 80, 86**

AND

IN THE MATTER OF: PLOT NUMBER GEDE/MIJIMBONI/162

AND

**RULES AND SECTION 1B AND 3A OF THE CIVIL PROCEDURE ACT CAP 21 AND
SECTION 7, 13 AND 38 OF THE LIMITATION OF ACTIONS ACT CAP 22 LAWS OF KENYA**

BETWEEN

1. DEVID GREMMO

2. DANIELL GREMMO

3. SARA GREMMO.....PETITIONERS

AND

1. MILENA BORA

2. REGISTRAR OF TITLES MOMBASA

3. LAND REGISTRAR KILIFI

4. HON. ATTORNEY GENERAL

5. OMAR SALIM ABDALLA

6. LUCY K. MUSINGA

7. WILIAM O. WAMEYO T/A MUSINGA & CO. ADVOCATES

8. JACK W. WATIKA.....RESPONDENTS

J U D G M E N T

The Petitioners' case:

1. In the Petition dated 8th October 2012, the Petitioners have averred that they are the children of the late Giovanni Gremmo who died on 18th December 2009 at Malindi and that at the time of his death, he was the registered proprietor of Gede/Mijimboni/162 and portion number 1751 Malindi (the suit properties).
2. It is the Petitioners' case that pursuant to the confirmation of the grant, they were entitled to inherit amongst others the suit properties.
3. According to the Petitioners' Petition, it is not true that the 1st Respondent lived with their late father on portion number 1757 and that their father never made an inter vivos gift of ½ undivided share in the suit properties to the 1st Respondent.
4. The Petitioners have averred that on 19th May 2009, the deceased had gone to the 6th Respondent's firm to sign a sale agreement for plot number Chembe/Kibabamshe/366 only; that the legal fees on the fraudulent transfer in respect to the suit properties was paid after the demise of the Petitioners' father and that the consent of the Board was obtained "postmortem".
5. In the Petition, the Petitioners are claiming for the following reliefs:

(a) A declaration that the Letter of Consent serial number 39395 dated 11th February 2010 is null and void ab inito.

(b) A declaration that the transfer giving one half share in Gede/Mijamboni/162 to the 1st Respondent and registered on 1st March 2010 at Kilifi Land Registry by the 3rd Respondent is null and void for fraud.

(c) An order that the 3rd Respondent do forthwith rectify the register for Gede/Mijomboni/162 and re-instate the name of Giovanni Gremmo.

(d) A declaration that the indenture of conveyance dated 19th March 2010 giving one ½ share of Malindi portion No.1757 of the freehold interest therein to the 1st Respondent and registered on 1st March, 2010 at Mombasa Land Registry by the 2nd Respondent is null and void for fraud.

(e) A declaration that the Indenture of conveyance that gave rise to the subject matter of the search issued by the 2nd Respondent dated 16th November 2010 which certifies that the 5th Respondent is the registered proprietor of the entire freehold interest in Malindi portion No. 1757 at Mombasa Land Registry is null and void for fraud.

(f) An order that the 3rd Respondent do forthwith rectify the register for Malindi Portion No. 1757 and re-instate the name of Giovanni Gremmo.

(g) Any other relief that this Honourable Court may deem fit to grant.

(h) Costs.

6. The Respondents were served with the Petition in the year 2013 and on 13th July 2015. Except for the 2nd and 3rd Respondents, the other Respondents did not file responses to the Petition.

The Respondents' case:

7. The 2nd Respondent deponed that portion number 1757 Malindi was transferred to Giovanni Gremmo vide a transfer dated 6th February 1997; that on 3rd March 2010, Giovanni Gremmo transferred his ½ undivided share to the 1st Respondent; that on 16th November 2010, the suit property was transferred to the 5th Respondent and that it is upon the 1st and 6th Respondents to disapprove the allegations of fraud.
8. On his part, the 3rd Respondent deponed that on 2nd March 2009, Giovanni Gremmo transferred his ½ undivided share to the 1st Respondent and that it is upon the 1st and 2nd Respondents to disprove the claims of allegation of forgery in the Petition.
9. The Petitioners' advocate and the 2nd and 3rd Respondents' advocate filed brief submissions which I have considered.

Analysis and findings:

10. The Petitioners claim is that the transfer of ½ undivided share of portion number 1757 Malindi and Gede/Majimboni/167 to the 1st Respondent by the late Giovanni Gremmo was fraudulent, null and void.
11. The evidence produced in this court shows that Giovanni Gremmo died on 18th December 2009.
12. According to the documents annexed on the Affidavits of the Petitioners, the 2nd and 3rd Respondents, the late Giovanni Gremmo purportedly signed the transfer documents in respect of both properties in favour of the 1st Respondent on 19th May 2009.
13. According to the two transfer documents, the deceased's signature was witnessed by William O. Wameyo and the documents were drawn by the firm of Musinga & Co. Advocates.
14. Although the Transfers were executed on 19th May 2009, the same were not registered until 3rd March 2010, by which date Giovanni Gremmo had already died. The 1st Respondent then sold the suit properties to Omar Salim Abdalla, the 6th Respondent.
15. The 1st and 6th Respondents have not responded to the allegations of fraud leveled against them. Indeed, the advocate who purported to draw the transfer documents of 19th May, 2009 has also not responded to the Petition although he was sued.
16. In the circumstances, I find and hold that the Petitioners have proved their case on a balance of probabilities.
17. For those reasons, I allow the Petition dated 8th October 2012 as prayed.

Dated and delivered in Malindi this 23rd day of **October** 2015.

O. A. Angote

Judge