



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE NO. 40 OF 2012

FATUMA MKOBA FURUMA.....PLAINTIFF

=VERSUS=

SSEYYEDA FAHMEEDA BEGUM..... 1ST DEFENDANT

THE COMMISSIONER OF LANDS.....2ND DEFENDANT

J U D G M E N T

Introduction

1. The Plaintiff is seeking for the orders of this court restraining the defendants or anybody else acting on their behalf from dealing in any manner whatsoever with the parcel of land known as Ngumo Pasta Mazeras/522 (the suit property).
2. According to the Plaint dated 30th January 2012, the deceased, Mohamed Mambo Mtambara purchased the suit property situated in Mazeras town from David Kuria, deceased, for Kshs.7,000.
3. It is the Plaintiff's averment that the deceased, who was her husband, took possession of the suit property and developed it by putting up a permanent building and planting cash crops; that the land adjudication process commenced in the 1980's and that the deceased was identified as the owner of the land.
4. The Plaintiff's husband passed on in the year 1987 before the title to the suit property was processed but later on discovered that the suit property had been fraudulently registered in the name of the 1st Defendant.
5. The 1st Defendant was served with Summons to Enter Appearance and the Plaint by the Plaintiff's counsel by way of registered post pursuant to an order of Meoli J of 8th May 2012. The Attorney General received summons to Enter Appearance and Plaint on behalf of the 2nd Defendant. The Defendants did not enter appearance. The matter proceeded for formal proof on 23rd September 2013.

Plaintiff's evidence

6. The Plaintiff, PW1, informed the court that she was married to the late Mohamed Mambo Mtambara who died in 1987. The Plaintiff produced in evidence the death certificate as exhibit number 1.
7. According to the Plaintiff, when her husband died, she inherited the suit property where she used to stay with her husband. She is still staying on the parcel of land to date. PW1 produced her

- marriage certificate as exhibit number 2.
8. PW1 testified that when she conducted an official search in respect to the suit property, she discovered that the suit land had been registered in favour of the 1st Defendant whom she does not know. The Plaintiff produced the official search as exhibit number 3.
 9. It was the Plaintiff's evidence that she went to Nairobi to inquire why the suit property had been registered in the name of the 1st Defendant. She also wrote letters to the Ministry of Lands which was never responded to. The Plaintiff produced the said letters as exhibits number 4. She then decided to file the present suit after some people unknown to her started fencing the suit property. The Plaintiff produced as exhibit number 5a-c the photographs showing the activities of the 1st Defendant's agents on the suit property.
 10. The Plaintiff also produced in evidence a copy of the caution that she had prepared to lodge with the District Land Registrar as exhibit number 6. The limited grant was produced as exhibit number 7 and the grant of letters of administration was produced as exhibit number 8.
 11. The Plaintiff finally testified that the suit property was purchased by her late husband from David Karisa on 7th June 1766. A sale agreement was produced as exhibit number 9.
 12. PW2 testified that that he was born in 1952 in Mazeras. PW2 stated that he has known the Plaintiff and her husband since he was born and that the Plaintiff's late husband was their elder in the mosque. According to PW2, his land is parcel of land number 647 and it abuts the Plaintiff's parcel of land number 522.
 13. PW2 stated that the Plaintiff has always lived on the suit property and that the suit property together with his land were adjudicated and registered pursuant to a presidential order. However, when he went to check on the status of the Plaintiff's land in the land registry, he found that the suit property had been registered in the name of the 1st Defendant whom they did not know.
 14. PW3 stated that he met the Plaintiff in 1991 and that he purchased a piece of land in her neighborhood. In 2009, he decided to pursue his title. The Plaintiff requested PW3 to find out for her if her land could be surveyed as well by the surveyor who had surveyed his land. When PW1 informed his surveyor about the Plaintiff's request, the surveyor informed him that he was aware that the Plaintiff's land had already been surveyed.
 15. PW3 obtained the Registered Index Map for Mazeras and traced the Plaintiff's land on the said map. He discovered that the Plaintiff's land was parcel number 522 and conducted an official search at the lands office. It is after conducting the said search that he discovered that the property had been registered in favour of the 1st Defendant on 5th March 2005 and a title issued to him on 7th August 2006. According to PW3, the Plaintiff has always been on the suit property since 1991 when he knew her.
 16. The grandson of the Plaintiff, PW4 stated that he stays at Mazeras. PW4 further informed the court that he was born in the Plaintiff's house and that he has grown up on the suit property.
 17. According to the witness, the Plaintiff's house was washed away by the rains in 1997 and he put up another house for her in that year on the suit on the suit property. He has constructed his house on the same property and his family has always lived there. His five brothers have also constructed their houses on the suit property.
 18. The Plaintiff counsel made oral submissions on the same day which I have considered.

Analysis

19. The Plaintiff's averments and testimony that she has been staying on the suit property since 1966 when her late husband bought the land was not controverted by the Defendants.
20. The Plaintiff produced in evidence the letters of administration in respect to the Estate of her late husband which were granted to her by the High Court in Mombasa on 22nd May 2012.
21. All the witnesses, including the Plaintiff's neighbours and grandson stated that they have never seen the 1st Defendant although the official search shows that he was registered as the proprietor of the land in the year 2005.
22. In view of the fact that the Plaintiff's evidence was never challenged by the Defendants, and considering that evidence was placed before me showing that it is the Plaintiff and her grandsons who have been staying on the piece of land before and after the adjudication process, I find and hold that the Plaintiff has proved her case on a balance of probabilities.

23. I shall, which I hereby do, allow the Plaintiff's Complaint dated 30th January 2012 as drawn. I shall however not award General Damages for conversion because no evidence was led to prove that claim.

Dated and Delivered in Malindi this 25th day of **October**, 2013

O. A. Angote

Judge