



El Kithiri (Administrator of the Estate of Faraj Abeid) v Timimi (Environment & Land Case E130 of 2022) [2024] KEELC 3721 (KLR) (24 April 2024) (Judgment)

Neutral citation: [2024] KEELC 3721 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E130 OF 2022**

NA MATHEKA, J

APRIL 24, 2024

BETWEEN

HAMDAN FARAJ ABED EL KITHIRI (ADMINISTRATOR OF THE ESTATE OF FARAJ ABEID) PLAINTIFF

AND

YUSUF KARAMA TIMIMI DEFENDANT

JUDGMENT

1. The plaintiff brings this suit as the son of the late Faraj Abeid also known as Faraj Abeid Said who died on 3rd October 1983 in Mombasa and has obtained a Limited Grant. The plaintiff avers that sometime before his death the late Faraj Abeid together with others obtained space known as Plot Number Mombasa/Block XVI/1113 and were waiting for a title deed to come out in their joint names. The plaintiff avers that the title deed indeed came out and was registered in the names of three people namely; Faraj Abeid Said a.k.a Faraj Abeid, Mohamed Karama Abeid and Yusuf Karama Timimi and the plaintiff all along knew that his late father had a share of the said plot. The plaintiff avers that sometime in 2013 the defendant without his knowledge moved and changed the ownership of the plot and removed the name of his late father from the title and purported to claim that he had no right over the title. The Plaintiff avers that the actions of the defendant were illegal, malicious and intended at denying the plaintiff and other rightful beneficiaries of the Estate of the late Faraj Abeid right to own their rightful share of the plot. The Plaintiff states that the defendant has continued to behave as if the plaintiff has no right over the property and has unashamedly denied that the plaintiff has a right to the said property. The plaintiff avers that the defendant had no right whatsoever to remove the name of the late Faraj Abeid from the title and his action was punctuated by fraud and misrepresentation and as such a nullity.
2. The plaintiff avers that even after the death of his father, Mr. Faraj Abeid he still had an interest in the title and by removing his late father's name, the defendant was cutting him off as a potential beneficiary



of the property. The plaintiff now comes to court seeking reinstatement of the Title Deed as it was in 1995 when it was first issued and cancellation of the title issued on 27th February 2013 in the names of Mohamed Karama Abeid and Yusuf Karama Timimi.

3. The defendant avers that land parcel number Mombasa/Block XVI/1113 was initially registered in the name of Awadh Saleh Said and Said Saleh Said which was on or about 8th June 1992. That the land was later transferred to Mohamud Karama Abed and Yusuf Karama on or about 2nd March 1995 and a title deed was subsequently issued. Mohamud Karama Abed and Yusuf Karama have been in quiet possession of the suit premises since the issuance of the title deed. On or about 31st January 2013, the defendant and the co- owner of the property realized that there was an erroneous entry on the title since it had captured one Faraj Abed as a co- owner but the entry was erroneously done as the said Faraj Abed has never been a lawful owner or in occupation of the suit property.
4. This court has considered the evidence and the submissions therein. The plaintiff averred that L.R Title No. Mombasa/Block XVI/1113 was registered on 2nd March 1995 in the names of Faraj Abeid Said, Mohamed Karama Abeid and Yusuf Karama Timimi. He maintained that the defendant fraudulently removed the name of his deceased father from the title of the suit property and on 27th February 2013 was issued with a certificate of title to the suit property in the names of Mohamed Karama Abeid and Yusuf Karama Timimi. The defendant in his defence, argued that the registration of Faraj Abeid Said in the certificate of title issued on 2nd March 1995 was an erroneously entry. He maintained that together with Mohamed Karama they wrote to the Registrar of Lands, Mombasa on 31st January 2013 requesting for a rectification of the certificate of title. In the said letter, they explained to registrar that the inclusion of Faraj Abeid was a mistake that was done and that they are the true owners of the suit property. The registrar effected the said rectification and on 27th February 2013 issued a new Certificate of title in the names of Mohamed Karama Abeid and Yusuf Karama Timimi.
5. L.R Title No. Mombasa/Block XVI/1113 was registered on 2nd March 1995 in the names of Faraj Abeid Said, Mohamed Karama Abeid and Yusuf Karama Timimi. Faraj Abeid Said died on 3rd October 1983, he is the father to Hamdan Faraj Abeid and a maternal grandfather Yusuf Karama Timimi, and Mohamed Karama (deceased). Yusuf Karama Timimi in his defence hearing admitted that together with his brother Mohamed Karama (deceased) wrote a letter to the land registrar with the exclusion of the children of Faraj Abeid Said to have his name removed from the certificate of title on the ground that it was an erroneous added during registration.
6. Section 79 (1) of the [Land Registration Act](#), No. 3 of 2012 empowers the registrar to rectify the land registrar in several instances. It provides;
The Registrar may rectify the register or any instrument presented for registration in the following cases—
 - (a) in formal matters and in the case of errors or omissions not materially affecting the interests of any proprietor;
 - (b) in any case and at any time with the consent of all affected parties; or
 - (c) if upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the Registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel.
7. From the evidence before court, it is clear that that the parties herein belong to one extended family. The defendant admitted during cross examination that his grandfather owned a third of the suit property. However, the defendant could not explain to court why he and his late brother decided to apply to



the registrar to have his grandfather's name removed from the certificate of title. The reason indicated on the green card for cancelling Faraj Abeid name off the title document was that his inclusion was erroneous. However, no evidence was adduced as to how the same amounted to a mistake that would warrant the registrar to rectify the green card and issue a new title.

8. The law is clear, the registrar has to involve all those who will be affected by the said rectification, the same did not happen in this case. The defendant admitted during cross examination that he did not involve the plaintiff of their application to have the name of his father removed from the title document. The court in *Mary Ruguru Njoroge vs John Samuel Gachuma Mbugua & 4 others* (2014) eKLR held that;

“Under Section 79 (1) (a) of the *Land Registration Act*, No. 3 of 2012 the Registrar has powers to rectify the land register in the event of an error or omission which does not materially affect the interest of any registered proprietor. In short, such rectifications must not vitiate the proprietorship apparent on the register. The rectification must not be to the extent that it amounts to a transfer or cancellation of ownership unless it was fraudulently obtained as outlined under Section 79(2). The registrar may also upon proof of change of the name or address of the proprietor occasion any rectification: see Section 79(3) of the *Land Registration Act*.

9. The registrar ought to have satisfied himself of the principles set out in Section 79 of the *Land Registration Act* that the rectification was justified. There is no evidence the same happened before the rectification was made which removed the name of Faraj Abeid from the title document. The defendant did not prove to the court that the name of Faraj Abeid was an erroneous entry in the register and certificate of title issued on 2nd March 1995. The name Faraj Abeid was not simply slip like a typographical error or substantive mistake of a wrong or erroneous name. He was the maternal uncle of the defendant and hence there was a direct connection between the registered proprietors. The court also notes that there has been an extended lapse of time between the original title was issued on 2nd March 1995 and the application for rectification and subsequent title being issued on 27th February 2013. So much has happened in between and since the said rectification heading to the institution of this case. There has been among the parties herein, Mombasa Kadhi- Court Succession Cause No. 86 of 2016, Mombasa Kadhi Court Succession Cause No. 167 of 2015 and Mombasa High Court Succession Cause No. 30 of 2012 relating to the succession of the suit property.

Section 26 (1) of the *Land Registration Act* provides that,

The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
10. The plaintiff averred that the rectification of the title documents was fraudulently obtained by the defendant. The court finds that the said rectification done by the registrar did not meet the set standards



outlined in Section 79 of the *Land Registration Act*. For that reason, the Certificate of Title issued thereafter cannot be taken by this court as conclusive evidence that the persons named therein as the proprietors of the suit property are the absolute and indefeasible owners. The court finds that it is proper and just to get back Faraj Abeid's name into the title document for the suit property as one of the proprietors. I find that on the balance of probability, the plaintiff has proved his case for rectification of the title to the suit property and I enter judgment in his favour in the following terms;

- i. The Land Registrar is hereby directed and ordered to effect rectification of the register of L.R Title No. Mombasa/Block XVI/1113 and include the name of Faraj Abeid Said within 90 days from the date of this judgment.
- ii. There be no order as to costs as parties herein are from one family.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 24TH DAY OF APRIL 2024.

N.A. MATHEKA

JUDGE

