



Siddique & another (Both suing o/b of the Estate of Noor Bibi w/o Mohamed Gulam Farid (Deceased)) v Akaranga & 4 others (Environment and Land Case Civil Suit E090 of 2023) [2024] KEELC 3898 (KLR) (18 April 2024) (Judgment)

Neutral citation: [2024] KEELC 3898 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E090 OF 2023
AA OMOLLO, J
APRIL 18, 2024**

BETWEEN

**MOAZZAM FARHAN SIDDIQUE 1ST PLAINTIFF
FARHAN BAGHBAN SIDDIQUE 2ND PLAINTIFF
BOTH SUING O/B OF THE ESTATE OF NOOR BIBI W/O MOHAMED GULAM FARID (DECEASED)**

AND

**SAMUEL ISIHAO AKARANGA 1ST DEFENDANT
TIMOTHY NG'ANG'A MACHARIA 2ND DEFENDANT
DAVID NYAMAI MUIINDI 3RD DEFENDANT
THE HON. ATTORNEY GENERAL 4TH DEFENDANT
THE CHIEF LAND REGISTRAR 5TH DEFENDANT**

JUDGMENT

1. The Plaintiffs filed a suit against the 1st-5th Defendants vide a Plaint dated 6th March 2023 seeking for the following orders;
 - a. A Declaration that the issuance of the family private property No. 209/1935 Nairobi in the name of the 1st Defendant Samuel Isihao Amakanga, 2nd Defendant Timothy Ng'ang'a Macharia and 3rd Defendant David Nyamai Muindi by the 5th Defendant Chief Land Registrar was illegal, unlawful and contrary to the original Letters of Administration issued on 31st October 1972 and the Amended Letters of Administration dated 17th July 2019 and the Certificate of Confirmation of Grant dated 19th November 2019 issued by the High Court in



Nrb HC Succ Cause No. 295 of 1972 *In The Matter of The Estate of Bibi Noor w/o Mohamed Gulam Farid (Deceased)*.

- b. An Order for Cancellation for the family private property LR No. 209/1935 Nairobi in the name of the 1st Defendant Samuel Isihao Amakanga, 2nd Defendant Timothy Ng'ang'a Macharia and 3rd Defendant David Nyamai Muindi by the 5th Defendant Chief Land Registrar forthwith.
 - c. An Order that the 5th Defendant The Chief Land Registrar do register Forms LRA 39 & 42 per the Certificate of Confirmation of Grant dated 19th November 2019 and do issue a new Title of the Family Private Property LR No. 209/1935 Nairobi in the name of the Plaintiffs Mohamed Mazhae Farid & Farhan Baghban Mohammed Siddique.
 - d. A permanent injunction be issued against the 1st, 2nd & 3rd Defendants, their family, personal representatives, servants, labourers, agents, assigns and any third party and/or other person authorised by them restraining them from occupying, entering, trespassing, selling, constructing or erecting all structures and/or interfering with the Plaintiff's ownership, occupation, possession and use of the Family Private Property LR No. 209/1935 Nairobi.
 - e. A permanent Injunction be issued restraining the Defendants from evicting the Plaintiffs and/or their families from the family private property LR No. 209/1935 Nairobi.
 - f. The Plaintiffs be awarded the general damages for fraud and trespass to property as against the Defendants.
 - g. The Defendants be jointly condemned to pay Costs of the Suit and interest.
 - h. Any other relief that the Honourable Court may deem just to grant
2. The Plaintiffs pleaded that the original registered owner/lessee of LR No. 209/1935 Nairobi located at Pangani estate, off Chai Road & off Bujumbura road near Pangani shopping centre, Starehe Sub-County within Nairobi City County herein after referred to as "the suit property" was Mohamed Gulam Farid (Deceased) with effect from 1st January 1941. They averred that they are the administrators of the Estate of Bibi Noor w/o Mohamed Gulam Farid (Deceased) vide the Certificate of Confirmation of Grant dated 19th November 2019 issued by the High Court in Nrb HC Succ Cause No. 295 of 1972; *In The Matter Of The Estate Of Bibi Noor W/O Mohamed Gui-Am Farid (Deceased)*.
 3. It is averred by the plaintiffs that on 28th November 2022, the 3rd Defendants served on them a letter dated 16th November 2022 seeking to evict squatters from the suit property which property has been their family property since 1st January 1941 to date. According to the impugned letter, the 3rd Defendant claim on the suit property is that it had been reallocated/re-allotted and registered as No. IR 2529 by the 5th Defendant because of lapse of the Lease for 99 years from which was granted by the Government of Kenya on 27th March 1928 set to expire on 27th March 2027.
 4. The Plaintiffs explained that the original owner/lessee of the suit property was their grandfather Mohamed Gulam Farid (Deceased) who was succeeded by his wife Bibi Noor (deceased) with effect from 13th March 1969. Subsequently, Bibi was succeeded by Mohamed Mazhar Farid vide the original Grant of Letters of Administration issued on 31st October 1972 in Nrb HC Succ Cause No. 295 of 1972; *In the Matter Of The Estate Of Bibi Noor W/O Mohamed Gulam Farid (Deceased)*. The Grant was re-issued to Mohamed Mazhar Farid, Farhan Baghban Mohamed Siddique & Moazzam Farhan Siddique vide Grant of Letters of Administration dated 17th July 2019.



5. They added that they have the legal occupation of the suit property as a family till 27th March 2027 when the lease will then be renewable to themselves and their heirs. That as of 22nd August 2022, the land rates record at Nairobi City County record for the suit property showed that the same belongs to Mohamed Gulam Farid. The Plaintiffs further stated that the Advocates for the 3 co-Administrators are in the process of registering the Court Grant amidst the delay occasioned by the migration to the digital land system. Hence it is their contention that the suit property was not available for repossession and re-allocation/re-allotment.
6. The Plaintiffs particularized fraud by all the Defendants to include; intermeddling with the deceased's property as on December 1999 before the lapse of the initial Grant of 99 years. That the 99 years lease envisaged on 27th day of March 1928 will lapse on 27th March 2027 thus any title held by the 1st, 2nd and 3rd Defendants or issued/or backdated to 1st December 1999 was illegally obtained and should be cancelled forthwith. That as on 28th November 2022 the Suit property was still under the administration of the High Court and the distribution had not been effected by the 5th Defendant at Ardhi House. Also, the estimated value of the suit property is Kshs.100 Million which is beyond monetary jurisdiction of the Chief Magistrate's Milimani Commercial Court where the Defendants purported to obtain *ex parte* eviction orders or permanent Injunctions.
7. The 4th and 5th Defendants filed a statement of defence dated 15th March 2023 denying the Plaintiffs' averments. They pleaded that they are strangers to the allegations contained in paragraphs 7-9 and 11-14 of the plaint and subject the Plaintiffs to strict proof thereof. The 1st to 3rd Defendants did not file any statement of defence.

Evidence.

8. The Plaintiffs called one witness Moazzam Farhan Siddique in support of their case who adopted his written statement dated 6th March 2023. He testified that he is one of the co-Administrators of the Estate of Noor Bibi w/o Mohamed Gulam Farid (deceased) vide the letters of administration dated 17th July 2019 and the certificate of confirmation of grant dated 19th November 2019. PW stated that the original registered owner of the suit property was his great grandfather Mohamed Gulam Farid whose ownership was from 1st January 1941. So they were shocked on 28th November 2022 to be served by the 3rd Defendant with a letter dated 16th November 2022 demanding to evict them from the suit property terming them as squatters.
9. PW testified that their original 99 years lease was granted by the Government of Kenya on 27th March 1928 and registered a No. IR 3040 will lapse on 27th March 2027 with an option to automatically renew to the heirs. In support of the Plaintiffs' case, PW1 produced the following documents as exhibits PExh1 to PExh10 as follows;
 1. Original Grant of letters of Administration issued on 31st October 1972
 2. Grant of Letters of Administration dated 17th July 2019
 3. Certificate of confirmation of Grant dated 19th November 2019
 4. A certified copy of the original certificate of title dated 7th May 1930 & the Transfer to Noor Bibi w/o Mohamed Gulam Farid dated 13th March 1969.
 5. Authorization letter from Jackline P.A Omolo & Co. Advocates dated 16th November 2022 addressed to Apex Depla Ltd to evict the Plaintiffs.
 6. Eviction Notice from Apex Depla Ltd dated 23rd November 2022 addressed to the Plaintiffs.



7. Plaintiffs' Land rate payment receipt dated 12th February 2019
 8. Nairobi City County Government land rate payment request dated 23rd August 2022
 9. Transfer forms LRA 39 & 42 dated 18th March 2022 pending for registration per the court grant.
 10. Plaintiffs' demand letter dated 30th November 2022 addressed to the Chief Land Registrar & The CEO Ethics and Anti-corruption commission and copied to DCI Pangani Police Division and the Director of Planning, Nairobi City County Government.
10. On cross examination by Ms Njuguna the State Counsel appearing for the 4th and 5th Defendants, PW confirmed that as per PExh 3 he is not listed as a beneficiary of the estate of Noor Bibi. That currently the suit property is registered in the joint names of the two deceased persons. He also stated that they were not served with an order of court for eviction and that the records from the City Council shows that the suit property is still under the ownership of Mohamed Gulam Farid (Mrs).

Submissions

11. The Plaintiffs filed submissions dated 7th February 2024 to further support their case. They relied on the cases of *Irene Wangari Gacheru & 6 Others v Attorney General* [2017] eKLR and *Daniel Gatuma Mutua & 10 Others v Attorney General & 5 Others* [2021] eKLR to submit that the evidence tendered to prove ownership of the suit property is unchallenged. Further, they cited the case of *Daudi Kiptugen vs Commissioner of Lands & 4 Others* [2015] eKLR for the proposition that the process of acquisition is material and if a title document was not acquired through a proper process, the same is not a good title.
12. The Plaintiffs submit that they are entitled to all the rights and privileges contained in section 24 and Section 25 of the *Land Registration Act* having proved to the court that they are the genuine joint owners of the suit property on a balance of probabilities.
13. None of the Defendants adduced any evidence nor filed any written submissions and so the matter was reserved for judgement.

Analysis and Determination:

14. The Plaintiffs are claiming that the suit property which they own was allegedly reallocated to the 1st and 3rd Defendants. The suit property being a registered land, ownership is domiciled and founded in the register of titles. The Plaintiffs have chronologically shown the sequential change in ownership of the suit property since the same was allotted to the late Mohamed Gulam Farid (Deceased) vide a grant dated 27th March 1928 and with effect from 1st January 1941.
15. It is noteworthy that no evidence of search conducted was produced by the Plaintiffs to conclusively prove that the suit property was reallocated to and or registered in the name of the 1st to 3rd Defendants as alleged by the Plaintiffs. The only evidence of interference is contained in PExh5, a letter dated 16th November 2022 which was a letter of instructions to Apex Depla Limited to evict squatters on LR 209/1935, Nairobi. Pex 6 is a letter dated 23rd November 2022 by Apex Depla Ltd to no one in particular and copied to OCS Pangani Police Station expressed their authority to evict. It stated thus;

“We act for the registered owners of LR No 209/1935 and on their instructions hereby give you instructions to proceed to evict all squatters on all that parcel of land number 209/1935. We would like to discuss instead of eviction from the said parcel of land”



16. This court is alive to how important land is held by Kenyans and as stated by the Court of Appeal in Chief Land Registrar & 4 others v Nathan Tirop Koech & 4 others [2018] eKLR,

“Land ownership and land rights is both a historical and emotive subject in Kenya. A right to hold property is a constitutional right as well as a human right and no person can be deprived of his property except in accordance with the provisions of the Constitution or Statute. The condition precedent to taking away anyone's property is that the authority must ensure compliance with the Constitution and Statutory provisions.”

17. Further, the Court of Appeal in the case of Kenya Broadcasting Corporation v Housing Finance Company of Kenya Limited & 2 others [2019] eKLR, stated that ;

“The general rule of law is that whoever desires a court to enter judgment with respect to any legal right or liability on the basis of facts which he/she asserts to exist is required to prove those facts. In other words, as per the well-known aphorism, ‘he who asserts must prove.’ See Sections 107 & 108 of the Evidence Act and Jennifer Nyambura Kamau vs. Humphrey Mbaka Nandi [2013] eKLR.

The centrality of evidence in any case cannot be gainsaid and was succinctly appreciated by this Court in Nation Media Group vs. Jakayo Midiwo [2018] eKLR as follows:

“On the other hand, evidence is the cornerstone of any trial. Cases are won or lost on evidence presented and the applicable laws. That is why a whole statute was enacted, the Evidence Act, to provide for both the standard and burden of proof in a trial.”

18. It is my view that although the Plaintiffs have proved their ownership to the suit property on a balance of probability, however, there is no evidence presented to show that the suit property has been registered in the names of any of the Defendants as alleged by the Plaintiffs. Courts cannot make orders in vacuum for cancellation of a title that has not been demonstrated to exist. I find no basis laid for issuing prayers (a) and (b) of the Plaint. Secondly, no evidence was provided to this court that the Chief Land Registrar had refused to register forms LRA 39 and 42. In fact, PW stated that the registration of those forms were delayed due to the migration to the digital platform. In any event, if the Chief Land Registrar refused to register them as alleged, recourse lie to the court from where the forms originated and so I declined to allow prayer (c) of the Plaint.
19. I shall grant prayer (d) and (e) because I am satisfied there is evidence of likely interference with the Plaintiffs’ occupation of the suit property. There was no proof of inconvenience suffered by the Plaintiffs to entitle them to an order for general damages and so prayer (g) is dismissed. I am also not persuaded to find that the Plaintiffs are entitled to costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF APRIL, 2024

A. OMOLLO

JUDGE

