



**Orango & another (Suing on Behalf of the Estate of Jared Orango Edmond) v Okoba & another
(Environment & Land Case 19 of 2018) [2024] KEELC 5364 (KLR) (18 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5364 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 19 OF 2018**

**OA ANGOTE, J
JULY 18, 2024**

BETWEEN

MARGARET ORANGO 1ST PLAINTIFF

ELIZABETH GACHERU 2ND PLAINTIFF

SUING ON BEHALF OF THE ESTATE OF JARED ORANGO EDMOND

AND

JOHANES BOYI OKOBA 1ST DEFENDANT

BASHY INVESTMENTS 2ND DEFENDANT

JUDGMENT

1. Before the Court for determination is the Plaintiffs' Plaintiff dated 22nd January 2018, in which the Plaintiffs are seeking for the following orders:
 - a. A declaration that the property known as Nairobi Block 111/78/Koma Rock (hereinafter the suit property) belongs to Jared Orango Edmond.
 - b. A declaration that the transfers done on 23rd April 2016 to the 1st and 2nd Defendants are null and void.
 - c. A mandatory order to issue reinstating the name of Jared Orango Edmond the bonafide rightful owner of the suit property.
 - d. Any other reliefs the Court may deem just and expedient to grant.
 - e. Costs.
2. The Plaintiffs averred in the Plaintiff that Jared Orango Edmond (hereinafter the deceased) who passed away intestate on 4th November 2015 was at all material times the registered owner of the suit property.



3. It was averred that the 1st Plaintiff who is the widow of the deceased is in possession of the title deed of the suit property. However, the Plaintiffs averred, on or about 23rd March 2016, the 1st Defendant fraudulently and unlawfully caused the suit property to be transferred to him.
4. It is the Plaintiffs' case that the 1st Defendant caused the suit property to be transferred to the 2nd Defendant; that the transfer to the 2nd Defendant was unlawful as the 1st Defendant had no interest in the suit property and that the 1st Defendant was consequently arrested for the offence of forgery and charged in Kibera Law Courts Criminal Case No. 3794 of 2016, Republic vs Johanes Boyi Okoba.
5. In conclusion, the Plaintiffs averred that the 2nd Defendant has threatened to evict their tenants from the suit property and that the title in favour of the 2nd Defendant should be cancelled and revert the suit property back to the estate of the deceased.
6. The 2nd Defendant filed a Defence dated 15th February 2018. The Plaintiffs' averments as set out in the Plaint were denied. The 2nd Defendant further stated that it lawfully acquired the suit property from the 1st Defendant without any notice of fraud or malpractice.
7. In conclusion, it was averred in the Defence by the 2nd Defendant that the calls for revocation of title were uncalled for because it had legally acquired the suit property. The 1st Defendant did not file a Defence.

Hearing and Evidence

8. During trial, the 1st Plaintiff testified as PW1. She adopted her witness statement as her evidence-in-chief and produced her bundle of documents as exhibits. In her witness statement, she stated that she was a co-administrator of the estate of the deceased who owned the suit property.
9. PW1 informed the court that sometime in 2017, she was informed by her tenants that someone had attempted to distress for rent and reclaim the suit property; that she reported the matter to the police and that the 1st Defendant was eventually charged with forgery.
10. It was the evidence of PW1 that the 2nd Defendant and herself recorded statements in the criminal case; that the suit property belongs to the estate of the deceased and that the 2nd Defendant's title should therefore be cancelled.
11. On cross-examination by the 2nd Defendant's advocate, the 1st Plaintiff stated that she met the 2nd Defendant who is a shylock and runs a Microfinance Company during the criminal trial in Kibera and that the 2nd Defendant was in possession of a title to the suit property which was transferred to it by the 1st Defendant who had in turn purportedly acquired it from the deceased.
12. On re-examination, the witness stated that the title was registered in the name of the 1st Defendant after the deceased had passed away. The 1st Defendant then transferred the suit property to the 2nd Defendant. The Defendants did not testify.

Submissions

13. The Plaintiffs advocate filed their submissions on 9th February 2024. It was submitted that as per the title exhibited by the Plaintiffs, the deceased was the owner of the suit property at the time of his death; that the 1st Defendant not only admitted on oath during the criminal trial to changing the name on the title deed to his, but he was also found guilty and convicted on four counts of forgery including that of forging the title deed of the suit property.



14. In view of the foregoing, the Plaintiffs' advocate submitted, it was clear that the 1st Defendant fraudulently transferred the title to himself and that the deceased had no part to play in the said transfer.
15. Relying on Section 45 of the *Law of Succession Act*, Section 26 (1) of the *Land Registration Act* and the cases of Lucy Wanjiku Mwangi (Suing as the legal representative of the estate of Benson Mwangi Macharia) v Chief Land Registrar & 2 others [2022] eKLR and Karanja Guchu v Sabera Wanjiku Guchu & 3 others [2018] eKLR, the Plaintiffs submitted that the title in the name of the 2nd Defendant should be cancelled.
16. Concerning the 2nd Defendant, it was submitted that being a complainant in the criminal case meant that it was aware of the 1st Defendant's fraudulent conduct and could therefore not claim to be a bona fide purchaser for value. It was further submitted that since the 2nd Defendant did not file a civil claim against the 1st Defendant, judgement should be entered against them both jointly and severally.

Analysis and Determination

17. Based on the foregoing, the following one issue arises for determination:

a. Whether the 2nd Defendant's title to the suit property should be revoked.

18. This suit revolves around the ownership of the suit property. The Plaintiffs claim the suit property belongs to the estate of the deceased. They averred that the deceased owned it and did not transfer it to anyone before his demise. They produced in evidence a Certificate of Title in the name of the deceased in support of this assertion.
19. The 2nd Defendant also claims ownership of the suit property by way of a lawful transfer from the 1st Defendant. A Certificate of Title in the name of the 2nd Defendant was produced in support of this assertion. The Plaintiffs have asked for the 2nd Defendant's title to be revoked on the ground that it was acquired unlawfully and fraudulently.
20. Section 26 of the *Land Registration Act* provides as follows:

“(1) 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.”

16. The Plaintiffs submitted that the 1st Defendant was convicted of fraud relating to the title belonging to the deceased. This was in Kibera Law Court Criminal Case No. 3794 of 2016, Republic by Johanes Boyi Okoba. Part of the Judgement reads as follows:

“In this case there was a transfer copy from Jared to Johannes which was the question document. The document that was being compared with the transfers from Ann Nduta



to Jared. The document examiner also took signature specimen of the accused and the documents from lands office which were certified for comparison and found it to be a forgery as per exhibit 16...The prosecutor has proved their case by showing that the accused forged the documents that is the title deed which was in his possession and procured the transfer of land title number Nairobi Block 111/78 registered in the names of Jared Orango Edmond and the land register was altered falsely from registrar Mr. S.M Nabulindo who testified before Court...From his defence it is clear that the accused has admitted that indeed there was no proof from himself as to why the deceased title deed changed to his name. I will in the end find that the accused is guilty in all counts as charged... I will convict him under Section 215 of the Criminal Procedure Code.”

16. From the foregoing, it is clear that the transfer of the suit property from the deceased to the 1st Defendant was based on a forged title and is therefore illegal. Indeed, the finding by the lower court has neither been overturned on appeal nor controverted by the 1st Defendant who did not testify in this matter.
16. Considering that the 1st Defendant had no valid title to pass to the 2nd Defendant, it is the finding of this court that the Plaintiffs have proved their case on a balance of probabilities. The Plaintiffs’ suit is allowed as follows:
 - a. A declaration be and is hereby issued that the property known as Nairobi Block 111/78/Koma Rock belongs to Jared Orango Edmond.
 - b. A declaration be and is hereby issued that the transfers done on 23rd April 2016 to the 1st and 2nd Defendants are null and void.
 - c. A mandatory injunction is hereby issued directed to the Chief Land Registrar to reinstate the name of Jared Orango Edmond as the registered owner of the parcel of land known as Nairobi Block 111/78/Koma Rock.
 - d. The 1st Defendant to pay the costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 18TH DAY OF JULY, 2024.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Kitheka for Plaintiffs

No appearance for Defendant

Court Assistant: Tracy

