



**Abdalah v Munala (Environment & Land Case 47 of 2017)
[2024] KEELC 5947 (KLR) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 5947 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 47 OF 2017
DO OHUNGO, J
SEPTEMBER 19, 2024**

BETWEEN

MBARACK OKONJI ABDALAH PLAINTIFF

AND

JAVAN S ATICHI MUNALA DEFENDANT

JUDGMENT

1. The Plaintiff moved the Court through Plaintiff dated 10th February 2017 wherein he averred that he entered into a land sale agreement with the Defendant on 24th September 2012 pursuant to which he gave the Defendant the original of the title deed for land parcel number Isukha/Shirere/5648 for the purpose of subdividing it into two parcels. That instead, the Defendant subdivided the parcel into four parcels namely Isukha/Shirere/5827 to 5830 and proceeded to give him Isukha/Shirere/5827 and retained the other parcels. That the Defendant sold and transferred Isukha/Shirere/5830 (the suit property) to Zura Amakobe without his consent.
2. The Plaintiff therefore prayed for judgment against the Defendant for:
 - a. An order restraining the Defendant by himself his servant and/or agents or otherwise whatsoever from constructing or doing any development on the said parcel of land No Isukha/Shirere/5830 pending the hearing and determination of this suit.
 - b. An order for revocation of the aforesaid land title deed No Ishukha/Shirere/5830 to read the names of the plaintiff herein Mbarack Okonji Abdallah.
 - c. Costs and interest of this suit at the court rate.
 - d. Any other relief (sic) this honorable court may deem fit.
3. The Defendant filed a defence denying the Plaintiff's claims and urging the Court to dismiss the suit with costs.



4. At the hearing, the Plaintiff testified as PW1 and adopted his witness statement. He stated that he sold a portion of parcel number Isukha/Shirere/5648 to the Defendant and handed to him the original of the title deed for subdivision. That the Defendant subdivided the parcel into four parcels namely Isukha/Shirere/5827 to 5830 out of which the Defendant acquired Isukha/Shirere/5828 and left Isukha/Shirere/5827 and 5829 for the Plaintiff. That the Defendant did not surrender to him the title for Isukha/Shirere/5830 (the suit property) only for the Defendant to later claim that the suit property was sold to him by Zuhura Amakobe. He stated in the statement that Zuhura Amakobe was a stranger to him and that the Defendant acquired the suit property fraudulently.
5. In his oral testimony, the Plaintiff acknowledged that Zuhura Amakobe is his sister and that he gave her a plot. He denied that he transferred the suit property to Zuhura but acknowledged that the suit property was registered in his name in the year 2012 then transferred to Zuhura in the year 2013. He denied ever attending the Land Control Board or registering the transfer.
6. The Plaintiff's case was then closed.
7. The Defendant testified as DW1 and adopted his witness statement which he had filed on 2nd May 2017. He stated that he entered into an agreement with the Plaintiff pursuant to which the Plaintiff sold him a portion of portion of parcel number Isukha/Shirere/5648 as a result of which the parcel was subdivided as stated by the Plaintiff. That he later met the Plaintiff's sister Zuhura Amakobe Abdallah and entered into an agreement with her pursuant to which she sold to him the suit property after which a transfer was registered in his favour on 23rd January 2013.
8. The Defendant further testified that he and the Plaintiff attended Lurambi Land Control Board and that the original title deed for Isukha/Shirere/5648 was handed over to a surveyor to process the subdivision and transfer. That Zuhura obtained title deed on 17th January 2013 and transferred the suit property to him within six days.
9. Zuhura Amakobe Abdalla testified as DW2 and adopted her witness statement dated 2nd May 2017. She stated that the Plaintiff is her brother and that their father gave her a portion of his land which he had by then shared out to the Plaintiff and her other brother by the name Abdulaziz Abdallah. That in compliance with her father's wishes, the Plaintiff voluntarily subdivided his Isukha/Shirere/5648 and transferred the suit property to her and in turn she transferred the suit property to the Defendant. That, similarly, Abdulaziz Abdallah subdivided his parcel and transferred a portion to her, which she also sold to the Defendant. She added that she has no claim against either the Defendant or the Plaintiff.
10. Lastly, Mohammed Iddi Ambani (DW3), a cousin to the Plaintiff testified that the Plaintiff transferred the suit property to DW2 pursuant to the Plaintiff's father's wishes.
11. Defence case was then closed. Thereafter, parties filed and exchanged written submissions.
12. I have considered the pleadings, evidence and submissions. The issues that arise for determination are whether the Defendant's title should be nullified and who bears the costs of the suit.
13. There is no dispute that the Defendant is the registered proprietor of the suit property. From the material on record, it is apparent that the suit property is a subdivision of Isukha/Shirere/5648 and that the Plaintiff was the registered proprietor of Isukha/Shirere/5648 from 17th August 2011 until 30th October 2012 when the said parcel was closed upon subdivision.
14. A perusal of the register in respect of the suit property shows that the Plaintiff was its registered proprietor from 30th October 2012 until 15th January 2013 when his sister Zuhura Amakobe Abdallah became the proprietor. Subsequently, the Defendant became the proprietor on 23rd January 2013.



15. The law relating to proprietorship of registered land and the circumstances in which title can be impeached is clear enough. A registered proprietor is entitled to the rights, privileges, and benefits under Article 40 of the Constitution and Section 24 of the Land Registration Act. The registration vests in the proprietor the absolute ownership of the land together with all rights and privileges belonging or appurtenant thereto.
16. In terms of Section 25 of the Land Registration Act, the registration is not liable to be defeated except as provided in the Act. Additionally, Section 26 of the Act obligates courts to accept the proprietor's certificate of title as conclusive evidence of proprietorship, unless the provisos under Section 26 (1) (a) or (b) are established. The grounds on which a title can be nullified are fraud or misrepresentation to which the registered proprietor is proved to be a party or where it is shown that the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.
17. As narrated above, the Defendant obtained title from Zuhura Amakobe Abdallah. The Plaintiff has not sued Zuhura. His case as pleaded in the plaint is that the Defendant transferred the suit property to Zuhura without his consent. I do not see how that could have happened in the absence of fraud. The Plaintiff did not plead any fraud. On the contrary, he stated that he gave a portion of Isukha/Shirere/5648 to Zuhura. The suit property is a portion of subdivision of Isukha/Shirere/5648. Zuhura's and DW3's testimony made it clear that the transfer to Zuhura was pursuant to a family arrangement. As a registered proprietor, Zuhura had every right to sell and transfer the suit property to the Defendant. She did not need the Plaintiff's consent to do so.
18. The Plaintiff has not demonstrated any valid reason to warrant nullification of the Defendant's title. I find no merit in the Plaintiff's case, and I therefore dismiss it with costs to the Defendant.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 19TH DAY OF SEPTEMBER 2024.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Osango holding brief for Mr Khayumbi for the Plaintiff

Mr Isiaho holding brief for Mr J Mukavale for the Defendant

Court Assistant: M Nguyayi

