



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO. 259 OF 2015

THOMAS OMER.....1ST PLAINTIFF

DR. OBURU ODINGA.....2ND PLAINTIFF

VERSUS

THE LAND REGISTRAR KISUMU.....1ST DEFENDANT

COROMANDELE INVESTMENT LIMITED.....2ND DEFENDANT

JUDGEMENT

Thomas Ochieng Omer, (hereinafter referred to as the Plaintiff) brought this suit against the Land Registrar Kisumu and later Dr. Oburu Odinga and Coromandele Investment Ltd were enjoined as 2nd Plaintiff and 2nd defendant respectively. The 1st plaintiffs claimed that at all material times, he was the administrator of the estate of his late father Michael Omer Onyando and late grandfather Onyando Omer known as KISUMU/DAGO/627 and KISUMU/DAGO/509 respectively.

The 2nd Plaintiff was the co-owner of the undivided share in the original KISUMU/DAGO/627 and the first registered owner of partition resulting there from to – wit KISUMU/DAGO/947. The Plaintiff avers that his late father Michael Omer Onyando was the registered owner of the original property KISUMU/DAGO/627.

The Plaintiff states that his late father's registration is captured in the Adjudication Record (AR) No. 268027 dated the 21/01/71. The Plaintiff further states that his late father had shown him the abovementioned parcel of land as the place where he would ultimately put up a home. He further states that without the consent from his father or otherwise the beneficiaries of his estate, the District Registrar Kisumu proceeded to fraudulently subdivide the parcel KISUMU/DAGO/627 into KISUMU/DAGO/947 and 948 to persons unknown to them who have fenced off the land and are currently putting up some structures.

The green card records furnished by the 1st defendant and the transfers demonstrate that the plaintiff's father transferred a portion (14/25) of his undivided share in the original KISUMU/DAGO/627 to Dr. Oburu Odinga on the 6/03/1975 and this after partitioning, constituted KISUMU/DAGO/947 in the names of Dr. Oburu Odinga. The Plaintiffs aver that it is not clear how Stanley Gathon Ngata became the first registered owner of KISUMU/DAGO/948 upon partitioning.

The 2nd Defendant became registered as proprietor of KISUMU/DAGO/627948 and KISUMU/DAGO/627 947 and began putting up structures on the parcels of land. The 1st Plaintiff further states that his grandfather's land being KISUMU/DAGO/990, 1208, 1209 were also affected.

The Plaintiffs claim that they have not been able to know the owners of KISUMU/DAGO/990, 1208 and 1209. That the 1st Defendant has not been able to furnish the documentary records of KISUMU/DAGO/509 which was subdivided into KISUMU/DAGO/990, 1208 and 1209 without the consent of Onyando Mer. The Plaintiffs allege fraud and have particularized the fraudulent activities.

The plaintiffs pray for orders **compelling the defendant to nullify the registers in question and have the said parcels registered in the names of the plaintiffs and that the title deeds be cancelled and reverted to the names of the family members. Moreover, for orders compelling the 1st defendant to nullify the register of land parcels, EAST KISUMU/DAGO/990, 1208 and 1209 and have the same revert in the names of the plaintiff to hold in trust and for the benefit of the beneficiaries of the late Onyando Omer. Furthermore, for orders compelling the 1st defendant to nullify the register of land parcel EASTKISUMU/DAGO/948 and the same revert in the names of the plaintiff to hold in trust and for the benefit of the beneficiaries of the late MICHAEL OMER ONYANDO. Lastly, for orders compelling the 1st defendant to nullify the register of land Parcel EAST KISUMU/DAGO/947 and have the same revert in the names of the 2nd plaintiff and Costs of this suit.**

The Defendants filed their defences denying the allegations by the plaintiffs. The matter proceeded for hearing but before conclusion the 2nd Defendant and 2nd Plaintiff entered a consent and settled their dispute in respect of KISUMU/DAGO/947 and KISUMU/DAGO/948 but now KISUMU/DAGO/4416. The 2nd Plaintiff and 2nd Defendant were struck out from the suit herein. The dispute now revolves on KISUMU/DAGO/

When the matter came up for hearing, the 1st Plaintiff Thomas Ocheing Omer (PW1) relied on his witness statement which was adopted by the court. He states that Land parcel KISUMU/DAGO/627 was registered in the names of his father Michael Omer. His father had subdivided the land and sold to Dr. Oburu Odinga a portion measuring 3.0 Ha. His father never transferred any land to Stanley Gaturu. His late father never told them that he had sold parcel KISUMU/DAGO/ 948 to Stanley Gathuru. However, he knows his father transferred parcel KISUMU/DAGO/947 to the 2nd Defendant.

According to the first plaintiff their home is positioned on parcel Kisumu/Dago509. When he was about ten years old and in class four his father took him to Kisumu/Dago/627 and showed him the area he intended to erect a house later. The land was vacant then. However, about 2011 or 2012 while working in Nairobi he saw construction taking place on parcel Kisumu/Dago948/. He visited the lands office and obtained relevant documents and instructed Counsel to file this suit.

He established that the 2nd Defendant was the one carrying out some development on the land. His advocate did a letter dated 19th August 2015 to the 2nd Defendant. The 2nd Defendant attempted to discuss with him to settle the matter but he declined because the suit had been filed in Court.

He applied for original title documents for parcel Kisumu/Dago509 and Kisumu/Dago509 through his advocates letter to Land Registrar dated 13th August 2015. The land Registrar did not furnish him with those documents before he filed this suit.

The state filed their pleadings and documents but have not availed any documents signed by his father transferring the parcel Kisumu/Dago/509 to Stanley Gathuru and that transfer and all the subsequent one should be cancelled or revoked and land returned to his late father for their administration.

As for Kisumu/Dago/509 he also learnt on doing searches at the Land Registrar's office that the land had been subdivided without his knowledge. His parents and all siblings have been living on parcel Kisumu/Dago/509 and they would have known of the subdivision and transfers if they were done by his late father. The subdivisions should therefore be cancelled or revoked and the parcel returned to the name of his late father. The registers for parcels Kisumu/Dago/948 and 509 should be rectified. He prays for costs. On cross examination by Alliongo, State Counsel for 1st Respondent he states that he saw the mutation for parcel number Kisumu/Dago/509 that was subdivided into Kisumu/Dago/989 and Kisumu/Dago/990. The 1st Defendant did not call any evidence at all despite there being a statement on record. I do find that the evidence of the Plaintiff is not controverted.

I have considered the evidence on record and the fact that the dispute between the 2nd plaintiff and the 2nd defendant has been completely settled and do find that the Plaintiff has demonstrated that the subdivisions and eventual transfers creating Kisumu/Dago/990, Kisumu/Dago1208 and Kisumu/Dago1209 were illegal as the proprietors of the original parcels never participated in the subdivision.

I do grant orders compelling the 1st defendant to nullify the register of land parcels, EAST KISUMU/DAGO/990, 1208 and 1209 and have the same revert in the names of the plaintiff father Onyango Omer. Costs of the suit to the Plaintiff.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 19TH DAY OF NOVEMBER, 2021

ANTONY OMBWAYO

JUDGE

This Judgement has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2020.

ANTONY OMBWAYO

JUDGE



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