

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
CIVIL SUIT NO. 205 OF 2014

Jacob OtienoPlaintiff

Versus

Gideon Okanga.....1st Defendant
Gilbert Okanga.....2nd Defendant
Joseph Otieno.....3rd Defendant
Terry Brown Creation Limited4th Defendant

PLAINT

1. The Plaintiff is an adult male of sound mind residing at Kanyakwar village in Kisumu County and whose address of service for purposes of this suit shall be C/O Njeri Oyoo & Company Advocates of P.O. Box No. 100, Postal Code 00100 GPO Nairobi.
2. The 1st Defendant is an adult male of sound mind residing and working for gain in Busia County and his address of service for purposes of this suit shall be P.O. Box No. 200, Busia.
3. The 2nd Defendant is an adult male of sound mind residing and working for gain in Siaya and his address of service for purposes of this suit shall be P.O. Box 300, Siaya.
4. The 3rd Defendant is an adult male of sound mind residing at Kanyakwar village in Kisumu County and whose address of service for purposes of this suit shall be P.O Box 20 Nyahera, Kisumu.
5. The 4th Defendant is a Limited liability Company with a registered office in Nairobi County and whose address of service for purposes of this suit shall be P.O. Box 400 Postal Code 400 City Square, Nairobi.
6. The 4th Defendant is the registered owner of all that piece of land known Kisumu/Kanyakwar/1188 (the suit land).
7. The Plaintiff avers that his late father who died in 1980 owned 40 acres of land registered as Kisumu/Kanyakwar/44 of which he had made a verbal Will that upon his demise, the land be shared equally between him and his three brothers namely, Joseph Otieno, Joel Otieno and Julius Otieno.
8. The Plaintiff avers that before the subdivision, the land had been transferred and registered in the name of the 3rd Defendant to be held in trust for him.
9. The Plaintiff avers that after demarcation and sub-division of the land, the 3rd Defendant retained the Plaintiff's parcel of land and later sold the land to the 1st and 2nd Defendants' father without his knowledge. The Plaintiff states that he came to know about the sale in the year 2005 when he was tilling the land and was confronted by the 1st Defendant who claimed beneficial ownership in the suit land.
10. The Plaintiff avers that he did not relinquish his interest in the suit land to the 3rd Defendant.

11. The Plaintiff avers that after he learnt of the illegal disposal of the suit land, he lodged a complaint in the Land Disputes Tribunal in 2013 and the award of the Tribunal was adopted on 7 March 2013; vide Misc Civil Award No. 10 of 2013. The 1st Defendant was ordered to facilitate transfer of the suit land to the Plaintiff, failure of which the Executive Officer was authorized to sign the transfer documents on behalf of the 1st Defendant.
12. The Plaintiff avers that based on the foregoing, the 1st and 2nd Defendants lacked legal capacity to sell or transfer the suit premises to the 4th Defendant.
13. In the alternative and without prejudice to the foregoing, the Plaintiff avers that:
 - a) The sale of land by the 3rd Defendant was illegal and lacked operation of the law because there was no Agreement for Sale between the 3rd Defendant and the 1st and 2nd Defendants.
 - b) The purported sale was bad in law. No consent was obtained from the Land Control Board as required under the Laws of Kenya or at all and the 1st and 2nd Defendants could therefore not pass a defective title to a third party.
14. The Plaintiff further avers that any purported transfer of land became inoperative by operation of the law.

WHEREFORE the Plaintiff prays for judgment against the Defendants jointly and severally for:

- a) A declaration that the 3rd Defendant had no legal authority to transfer the suit land to the 1st and 2nd Defendant's father; and consequently the 1st and 2nd Defendant had no legal authority to transfer the suit land to the 4th Defendant;
- b) Restitution of the suit land by cancellation of the 4th Defendant's title deed and issuance of a fresh title deed in the Plaintiff's name;
- c) Any other relief that this honorable Court deems fit.
- d) Costs for the suit;

Dated at Kisumu this.....day of2014

DRAWN AND FILED BY

Njeri Oyoo & Company Advocates
N.O. Chambers, Dennis Pritt Suites
P.O Box 100, 00100 GPO
NAIROBI

TO BE SERVED UPON.

1. Gideon Okanga
2. Gilbert Okanga
3. Joseph Otieno
4. Terry Brown Creation Limited

ADDITIONAL INFORMATION

- Upon demarcation and sub-division of the land, the 3rd Defendant retained the Plaintiff's parcel of land known as Kisumu/Kanyakwar/1188.
- The 1st and 2nd defendants are brothers.
- The 1st and 2nd Defendant's father died in year 2000.
- Mrs. Otieno, the 1st and 2nd Defendant's mother filed Succession Cause No. HCCC 40 of 2007 and was granted Letters of Administration on 12th October 2008.
- The 1st and 2nd Defendant's mother died in the year 2010.
- Upon their mother's demise the 1st and 2nd defendant filed Succession Cause No. 20 of 2012 and were granted Letters of Administration in 2013.
- The 1st and 2nd Defendants thereafter sold the suit land to the 4th Defendant in December 2013 vide an Agreement for sale of land.
- Summons to attend the Tribunal were purportedly served upon 1st Defendant's younger brother who had beneficial interest in the suit premises. He did not attend the Tribunal.
- At the time of filing the suit, the 1st and 2nd Defendants had planted sugarcane on the suit land. The 4th Defendant took vacant possession of the land upon completion of the sale transaction.
- The Plaintiff has not produced any documents to show previous ownership of suit land save for reference to a case filed prior to 2000 over ownership of land reference number Kisumu/Kanyakwar/44 wherein the Plaintiff lost the case.
- The 3rd Defendant did not file a defence and has no documents to rely on.
- At the time of filing this case, Advocate Njeri had not attained the required minimum Continuous Legal Education (CLE) points and had therefore not renewed her practice certificate.