



**Kagiri v Kagiri & another (Environment & Land Case 71 of 2017)
[2023] KEELC 22315 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22315 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 71 OF 2017
JO OLOLA, J
DECEMBER 20, 2023**

BETWEEN

ISABELLA NYOKABI KAGIRI PLAINTIFF

AND

DAVID KIONDORO KAGIRI 1ST DEFENDANT

SAMUEL KAGIRI KIONDORO 2ND DEFENDANT

JUDGMENT

Background

1. By the Complaint dated 25th April 2017, Isabella Nyokabi Kagiri (the Plaintiff) prays for Judgment against the two Defendants jointly for:
 - a) A declaration that the registration of LR. No. Mahiga/Kamoko/1201 and 1202 in the name of the 1st and 2nd Defendants was in trust and for the benefit of the deceased Joseph Kagiri Kiondoro;
 - b) That the trust be dissolved and the parcels of land to revert to the deceased or be registered in the name of the Plaintiff and the register be rectified;
 - c) That the costs of this suit be provided for; and
 - d) any other or better relief.
2. Those prayers arise from the Plaintiff's contention that she is the widow and administrator of the estate of the said Joseph Kagiri Kiondoro. It is her case that the deceased was the registered proprietor of LR. No. Mahiga/Kamoko/41 which parcel of land was sub-divided into LR. No. Mahiga/Kamoko/1201 and 1202.



3. The Plaintiff avers that on 20th June 2007, the deceased transferred the two new sub-divisions to the 1st Defendant who is her son and the 2nd Defendant who is their neighbor at no consideration and solely to spite her and ensure that she could not lodge any claim on the land.
4. The Plaintiff avers further that the intention of the deceased was to have the two Defendants to hold the two parcels in trust for himself and that he later tried to re-transfer the parcels to himself but the Defendants were reluctant in helping him to do so.

The Plaintiff's Case.

5. The Plaintiff (PW 1) testified as the sole witness in her case. Relying on her Statement dated and filed in court on 25th April 2017, she told the court that her husband Joseph Kagiri Kiondoro passed away on 14th December 2010.
6. PW 1 told the court that during his lifetime, her husband was the proprietor of a parcel of land known as Mahiga/Kamoko/41. Against PW1's wishes as the wife, the deceased caused the land to be sub-divided into two parcels, that is LR. No. Mahiga/Kamoko/1201 and 1202. He transferred parcel No. 1201 to the 1st Defendant and parcel No. 1202 to the 2nd Defendant on 26th June 2007.
7. PW 1 testified that by virtue of the transfers, she was left landless and that her husband later died on 14th December 2010 with no land of his own. She told the court that the 1st Defendant is her son while the 2nd Defendant is a member of her husband's clan. She further told the court her husband had transferred the parcels of land by way of a gift in order to make her destitute.
8. PW 1 further told the court that her husband believed that the two Defendants were to hold the land in trust for him and that he began the process of recovering the same from the Defendants prior to his death.

Analysis and Determination.

9. I have carefully perused and considered the Plaintiff's pleading herein, her testimony before the court as well as the evidence adduced at the trial. I have similarly perused and considered the submissions placed before me by Mr. Kiminda Advocate acting for the Plaintiff. While the Defendants were served, none of them entered appearance or filed any defence herein. The 1st Defendant however, attended all the mentions and hearings but declined to cross-examine the Plaintiff during the trial.
10. By her Pleat dated 25th April 2017, the Plaintiff prays for a declaration that the registration of the parcels of land known as LR No. Mahiga/Kamoko/1201 and Mahiga/Kamoko/1202 in the respective names of the 1st and 2nd Defendants herein was in trust and for the benefit of her husband the late Joseph Kagiri Kiondoro. The Plaintiff urges the court that upon making that finding, the said trust be dissolved and the said parcels of land to revert to the deceased's own name and /or be registered in her own name as the deceased's legal representative.
11. In support of that position, the Plaintiff asserts that she is the widow of the said Joseph Kagiri Kiondoro who passed away sometimes on 14th December, 2010. It is the Plaintiff's case that prior to his death, her husband was the proprietor of a parcel of land known as Mahiga/Kamoko/41. The Plaintiff told the court that purely out of spite for herself, sometimes in June 2007, her husband decided to sub-divide the said property into two parcels of land which he then transferred to the 1st and 2nd Defendants herein.
12. From the material placed before the court, it was evident that prior to the institution of this suit, the Plaintiff did obtain a Limited Grant of Letters of Administration Ad Litem for the Estate of the said Joseph Kagiri Kiondoro on 23rd June 2015 in Nyeri HCP & A Cause No. 463 of 2015. It was also



apparent from the copies of the Search Certificates produced in evidence by the Plaintiff that following the sub-division of LR No. Mahiga/Kamoko/41, the two suit properties were created following its sub-division on 17th January 2007 and title deeds were issued for the same in the name of the Plaintiff's husband on 28th March 2007.

13. While the Plaintiff has not produced any evidence of title deeds for LR No. Mahiga/Kamoko/1201 and 1202 in the names of the two Defendants, it was her case that on 20th June 2007 despite her protests and out of spite for herself, her husband transferred the parcels of land which is all they had to the 1st and 2nd Defendants as gifts at no consideration whatsoever. According to the Plaintiff, the sole purpose for the transfer was to render her destitute and to make sure she had no claim on the land whatsoever.
14. As it turned out, the 1st Defendant is a son to the Plaintiff and her deceased husband while the 2nd Defendant was said to be a member of the deceased husband's clan. While the Plaintiff produced no evidence that her husband had registered the properties in the names of the two Defendants in trust for himself, it was instructive that the suit properties were transferred at no consideration and that the Defendants themselves despite service did not deny that they were given the properties to hold in trust for the Plaintiff's husband.
15. While the 2nd Defendant did not enter appearance or file a defence, the 1st Defendant despite not entering a formal appearance always participated in the proceedings herein. On 6th June 2017, the 1st Defendant indeed conceded in open court that he had no objection to his mother's claim. Again on 20th March 2023 when the Plaintiff testified and he was given a chance to cross-examine her, the 1st Defendant told the court he had no questions for his mother.
16. Arising from the foregoing and given that the two Defendants chose not to challenge the Plaintiff's pleadings and testimony before the court, her evidence that the land was transferred to these defendants to hold in trust for her husband and to spite her and ensure she remained landless, were uncontroverted. As the sole legal representative of her now deceased husband, it is my considered view that she is entitled for her lifetime to the suit properties.
17. In the circumstances, I am persuaded that the Plaintiff has proved her case on a balance of probabilities and that the suit properties ought to revert to the name of her husband. Accordingly I hereby enter Judgment for the Plaintiff and make orders as follows:
 - a). A declaration is hereby made that the registration of LR No. Mahiga/Kamoko/1201 and LR No. Mahiga/Kamoko/1202 in the names of the 1st and 2nd Defendants respectively was in trust and for the benefit of the late Joseph Kagiri Kiondoro.
 - b). The said trust is hereby dissolved with an order that the two parcels of land do revert to the name of the deceased and the register be rectified accordingly.
 - c). I make no orders as to costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 20TH DAY OF DECEMBER, 2023.

In the presence of:

Ms. Mwangi holding brief for Kiminda for the Plaintiff.

Mr. David K. Kagiri – 1st Defendant in person.

No appearance for the 2nd Defendant.

Court Assistant: Kendi.



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J. O. OLOLA

JUDGE

