



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL CASE NO 74 OF 2014

JENNIFFER KATHUKU MATHIU.....PLAINTIFF

VERSUS

FRANCIS MUBICHI MUKIIRA.....DEFENDANT

J U D G M E N T

1. In her Plaint the Plaintiff seeks prayers against the Defendant for:-

1. ***A declaration that the Defendant holds (1) acre out of land parcel No. NTIMA/NTAKIRA/1577 in trust for the Plaintiff.***
2. ***An Order compelling the Defendant to transfer to the Plaintiff (1) acre of Land out of Land comprised in Title No. NTIMA/NTAKIRA/1577 failing which the Executive Officer of this Honourable Court should be authorized to do so.***
3. ***Costs of the suit.***
4. ***Any other relief.***

2. An Interlocutory Judgment was entered by the Deputy Registrar on 27/02/2015. It reads as follows:-

“ The Defendant having been served with the summons to enter appearance and defence and having failed to enter appearance within the stipulated period and on the application of M/s Gatari Ringera, Advocate for the Plaintiff, I enter Judgment for Plaintiff as prayed in the Plaint. Matter be listed for formal proof”

3. I am satisfied that the Defendant was properly served with the date for formal proof proceedings but refused and or failed to come to participate in the proceeding.
4. A conspectus of the genesis of this matter is captured by assertions in the Plaintiffs Plaint which are reproduced herebelow:-
 1. ***The Plaintiff is an adult female residing in Meru County and her address for service is care of Gatari Ringera & company, Advocates, Teachers House, 3rd Floor, Kirukuri Road, P.O Box 2913, Meru.***
 2. ***The Defendant is an adult male residing in Meru County (service of summons through the Plaintiff's Advocates' office).***

3. *The Plaintiff and the Defendant are the children of the late M'MUKIIRA M'KAMENYA (hereinafter referred to as "the deceased")*.
4. *During the process of land demarcation in the then Meru District the deceased's ancestral land was wrongfully and erroneously registered in the name of M'MUTIGA M'KONGU.*
5. *Following intervention by the Plaintiff's mother the said registration was reversed and the land that is now known as land parcel No. NTIMA/NTAKIRA/1577 was registered in the name of the defendant.*
6. *The plaintiff avers that the said land is ancestral land registered in the name of the defendant to hold in trust for the family of the late M'MUKIIRA M'KAMENYA.*

PARTICULARS OF TRUST

- i. *The Land was initially and wrongfully registered in the name of one M'MUTIGA M'KONGU.*
 - ii. *In acknowledgement of M'MUKIRA M'KAMENYA'S entitlement to the same under Meru Customary laws governing land tenure the said registration was reversed and the title duly registered in the name of an appointed trustee of the family of M'MUKIRA M'KAMENYA, the Defendant.*
 - iii. *The Plaintiff's deceased mother was instrumental in the said reversal and subsequent registration of the land in the name of the defendant.*
 - iv. *On securing the land, the Plaintiff's mother caused the Defendant and his mother to relocate to the land and apportioned a share thereof to them.*
 - v. *The Plaintiff and her mother were always in possession of one acre of the land.*
 - vi. *The defendant had acknowledged the status of the suit land as ancestral land devolving upon members of the family of M'MUKIRA M'KAMENYA.*
 - vii. *The land is ancestral land vested in the defendant under Meru customary land tenure system.*
7. *In breach of the said trust the defendant has evicted the plaintiff from the said land thereby disinheriting her.*

PARTICULARS OF BREACH OF TRUST

- i. *Evicting the defendant from the suit land.*
- ii. *Failing to allow the Plaintiff quiet and uninterrupted possession of one acre of the said land.*
- iii. *Failing to sub-divide and freely transfer one acre in discharge of his duties as a trustee.*
- iv. *Treating the land as his own freely obtained land.*
- v. *Failing to honour verdicts by various arbitration panels that one acre of the land be transferred to the Plaintiff.*
- vi. *Abdicating his duties as a trustee.*

(8) *The Plaintiff seeks a declaration that the defendant holds one acre of land in trust*

for the Plaintiff.

(9) Demand has been made.

(10) There is no pending suit and there have been no previous proceedings between the plaintiff and the defendant over the subject matter of this suit.

(11) The cause of action arose within the jurisdiction of this honourable Court.

REASONS WHEREFORE:

The plaintiff prays for judgment against the defendant for:-

- i. A declaration that the Defendant holds one (1) acre out of land parcel No. NTIMA/NTAKIRA/1577 in trust for the plaintiff.**
- ii. An order compelling the defendant to transfer to the plaintiff one (1) acre of land out of the land comprised in title No. NTIMA/NTAKIRA/1577 failing which the Executive Officer of this Honourable Court should be authorized to do so.**
- iii. Costs of the suit.**
- iv. Any other relief.**

5. In her oral evidence, the Plaintiff told the Court that the Defendant was his Stepbrother in that they shared the same father but had different mothers. She told the Court that the Defendant had evicted her from her 1 acre of land.
6. The Plaintiff told the Court that she took the matter to elders and an arbitration panel chaired by the Area Chief found that the suit land was ancestral land and ordered the Defendant to give her one acre. She produced the Minutes of the proceedings of the arbitration Panel as her exhibit. She says that the parties went to the Njuri Ncheke and it also found in her favour. She decried the lack of respect for ancestral authority by the Defendant. She told the Court that the elders had made a finding that the Constitution of Kenya recognizes the equality of both male and females in as far as inheritance of ancestral land was concerned.
7. The Plaintiff asked the Court to grant her prayers as prayed in the plaint. She also asked for costs.
8. I have considered the pleadings filed by the Plaintiff, the apposite Interlocutory Judgment and the oral evidence given by the Plaintiff.
9. I find that Land Parcel No. NTIMA/NTAKIRA/1577 is ancestral Land. Article 27 of the Constitution of Kenya accords equal rights to every person. I reproduce Article 27 (1) (2) and 3 as hereunder.

27 (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

27(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

27(3) Women and Men have the right to equal treatment, including the right to equal opportunities in political, economic, Cultural and social spheres

10. Article 60 of the Constitution lays down Principles of Land Policy in Kenya. At paragraph 60 (1) (f) it decrees elimination of gender discrimination in law, customs and practices relating to land and

property in land.

11) It seems to me that the Defendant is refusing to share out ancestral land just because the Plaintiff is a woman. This is unconstitutional. It is an antiquated practice that should be jettisoned to a Constitutional and Judicial dustbin. It should not be happening in the year 2016 of the 21st century. I deprecate that practice.

12) I find that the Plaintiff has proved her case against the Defendant. The following orders are granted:-

a. *An Order is issued compelling the Defendant to transfer to the Plaintiff one (1) acre of land out of land comprised in title No. NTIMA/NTAKIRA/1577 failing which the Executive Officer of this Court is empowered and authorized to execute all documents necessary for the implementation of this order.*

b. *As the parties are close relatives, I decline to issue any order regarding Costs.*

10. It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 19TH DAY OF MAY, 2016 IN THE PRESENCE OF :-

CC: Daniel/Lilian

Muthamia h/b Gatari Ringera

P.M. NJOROGE

JUDGE