



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ELC NO. 188 OF 2019

MODIE JUDITH FARRAR

EDWARD HARRY FARRA (*legal Administrators of the*

Estate of the late EDWARD FARRAR).....**PLAINTIFFS**

VERSUS

FIZABAI EBRAHIM ALIBHAI.....**DEFENDANT**

JUDGEMENT

This is the application of the plaintiffs who claim to be entitled to 1/6 undivided share of title No. 162/1 MN Maweni-Kisauni free on encumbrance for the determination of the following questions;

1. Is the 1/6 undivided share title No. 162/1 MN Maweni-Kisauni part to the late EDWARD FARRARI?
2. Are the Legal representatives/beneficiaries of the Estate of EDWARD FARRAR entitled to an encumbered 1/6 undivided share being his estate in respect to Title No. 162/1 MN MAWENI-KISAUNI?
3. Are the two charges registered by FIZABAI EBRAHIM ALIBHAI valid or have they been extinguished by performance of the deceased obligations under their charge agreement for loans of Kshs. 700/= and Kshs. 1500/= entered into on the 12th day of June, 1959 and on the 23rd day of July, 1959 respectively?
4. By dint of the repeal of the Money Lending Act in 1984, can the Chargee or her Legal Representatives be said to hold any lawful and/or legal charge over the Chargor's estate 1/6 undivided share in title No. 162/1 MN MAWENI-KISAUNI when they don't hold a valid license under the Banking Act, Cap 488 Laws of Kenya?
5. Should the registered charges be discharged and the Applicants be registered as the absolute proprietors of the 1/6 undivided share in the title No. 162/1 MN MAWENI-KISAUNI since they are the Administrators of the Estate of the late EDWARD FARRAR in Trust for his beneficiaries?
6. Should the Register be rectified accordingly, and the Registrar of the High Court signs any papers to facilitate the making of the entry and rectification of title?
7. Is the action for recovery of money secured by a charge already time barred?
8. Who is to bear the costs of this Summons?

PW1, the 2nd plaintiff testified that together with the 1st plaintiff they are the Legal representatives/beneficiaries of the Estate of EDWARD FARRAR entitled to an encumbered 1/6 undivided share being his estate in respect to Title No. 162/1 MN MAWENI-KISAUNI. That they are the two charges registered by FIZABAI EBRAHIM ALIBHAI valid or have they been extinguished by performance of the deceased obligations under their charge agreement for loans of Kshs. 700/= and Kshs. 1500/= entered into on the 12th day of June, 1959 and on the 23rd day of July, 1959 respectively. That by dint of the repeal of the Money Lending Act in 1984, can the Chargee or her Legal Representatives be said to hold any lawful and/or legal charge over the Chargor's estate 1/6 undivided share in title No. 162/1 MN MAWENI-KISAUNI when they do not hold a valid license under the Banking Act, Cap 488 Laws of Kenya. That the registered charges should be discharged and the Applicants be registered as the absolute proprietors of the 1/6 undivided share in the title No. 162/1 MN MAWENI-KISAUNI since they are the Administrators of the Estate of the late EDWARD FARRAR in Trust for his beneficiaries.

This court has considered the evidence and documents produced as exhibits in this case. The defendant was served by newspaper advertisement and failed to attend court or file any defence. PW1 produced the letters of administration intestate, the death certificate, confirmation of grant, certificate of ownership, deed plan and charge agreement. I find that his evidence remains unchallenged and is uncontroverted. I find that the plaintiffs have established their case on a balance of probabilities and I grant the following orders;

1. The registered charges be discharged and the Applicants be registered as the absolute proprietors of the 1/6 undivided share in the title No. 162/1 MN MAWENI-KISAUNI since they are the Administrators of the Estate of the late EDWARD FARRAR in Trust for his beneficiaries.
2. The Register be rectified accordingly, and the Deputy Registrar of the Environment and Land Court sign the documents to facilitate the making of the entry and rectification of title.
3. No orders as to costs as the suit was undefended.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 19TH DAY OF JANUARY 2022.

N.A. MATHEKA

JUDGE