



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 222 OF 2015

NADINE MARIA AVILLA VAN DER SPIEGEL.....PLAINTIFF

VERSUS

SADIK OMAR NGOLO.....DEFENDANT

JUDGMENT

By a plaint dated 2nd December 2015 the Plaintiff herein sued the Defendant seeking the following orders:

- 1. A declaration that the plaintiff is the lawful owner of the house situate on Plot No. 334/1/MN plus all amenities thereto.***
- 2. A prohibitory injunction do issue against the defendant whether directly or through his agents, servants and/or employees and any other person who are claiming or may claim through the defendant from dealing, alienating or in any other manner whatsoever disposing of the suit house situate on Plot No. 334/1/MN.***
- 3. A permanent injunction do issue restraining the defendant, his agents and/or servants and/or assigns and any other persons who are claiming or may claim through the defendant from interfering with the plaintiff's quiet possession, occupation enjoyment and/or ownership of the suit house situate on Plot No. 334/1/MN.***
- 4. General damages***
- 5. Costs of the suit***

PLAINTIFF'S CASE

PW1 adopted her statement filed on 4th December 2015 where she stated that she is a Belgian National and that she came to Kenya in 1993 and has been frequenting for holidays.

It was her evidence that in 1993 while on holiday she met the Defendant in Diani and they became mutual friends and agreed to support him financially. She averred that upon her return to Belgium, she discussed with her husband how best they could help the Defendant and they agreed on inviting him to Belgium to further his studies. That they helped him get a visa and the Defendant travelled to Belgium sometime in 1996 but the Defendant seemed not focused on his studies and they agreed that he comes back to Kenya.

PW1 also stated that she started an agricultural based project in Marafa, Kilifi County which was left under the management of the Defendant who ran down the project. PW1 then set up another project, a water project in Maweni area, Mtwapa.

She stated that it was out of this community involvement that the community leaders gave her a portion of land known as Plot No. 334 to put up a house for her use whenever she visited. That on the said parcel, she built two houses, one for the Defendant and his family and another for herself and put a canvas partition between the two houses.

PW1 produced 30 documents as Pex No. 1 to 30 to prove her case on how she acquired the land and the amounts spent on the construction of the houses together with the water project. PW1 stated that her name is on the list of beneficiaries of Maweni Settlement Scheme where her name in No. 483 and the Defendant's at No. 482.

It was PW1's evidence that they entered into an Agreement dated 11th April 2010 with the Maweni Community to initiate a water project at

Maweni which the Plaintiff did. She produced invoices and receipts of money paid by the Plaintiff towards materials for the house and for security and other related expenses.

PW1 testified that the Defendant has severally frustrated her and also laid claims to the Plaintiff's house and therefore urged the court to grant her orders as prayed in the Plaintiff.

DEFENCE CASE

The Defendant filed a Memorandum of Appearance dated 8th February 2016, a witness statement but neither filed a defence nor attended court to give evidence.

ANALYSIS AND DETERMINATION.

The issue for determination is whether the Plaintiff has proved that she is the rightful owner of the house on the suit land. This is an undefended case therefore the Plaintiff's evidence is uncontroverted.

The Plaintiff has given a history and chronology of events on how she met the Defendant, supported him financially and took him to Belgium for further studies but he was not keen on studies so he came back. The Plaintiff also stated how she started for him an agricultural project in Marafa but he ran it down necessitating her to start a community water project at Mtwapa. It was the Plaintiff's evidence that she was given a plot by Maweni Settlement Scheme where her name appears in the list of beneficiaries as No. 483 and the Defendant's at No. 482.

It is not in dispute that the Plaintiff is a beneficiary of a plot at Maweni Scheme through the community as she entered into an agreement to provide a water project to the community which she has exhibited before the court. The Maweni community who are beneficiaries of the water project have no complaint against the Plaintiff. There is also no dispute that the Plaintiff has built two houses, one for herself and one for the Defendant with her own funds as exhibited by the invoices and the receipts produced.

There is a trend in the Coastal region where foreigners are swindled of their hard earned money and investments. There are many people who want to reap where they have not sown. This trend is with domestic workers, caretakers, persons who claim liaison either sexual or otherwise with the victims and end up claiming ownership of the properties.

The other issue which is worrying in the Coastal region is proliferation of power of Attorneys which in most cases are not authentic hence used to fraudulently transfer people's properties. By the time the same is discovered, the power of Attorneys has been used to transfer properties to third parties.

I have considered the pleadings, the evidence and documents produced and find that the Plaintiff has proved her case on a balance of probabilities and therefore enter Judgment in the following terms:

- 1. A declaration is hereby issued that the Plaintiff is the lawful owner of the house situate on Plot No. 334/1/MN plus all amenities thereto.***
- 2. A prohibitory injunction is hereby issued against the Defendant whether directly or through his agents, servants and/or employees and any other person who are claiming or may claim through the Defendant from dealing, alienating or in any other manner whatsoever disposing of the suit house situate on Plot No. 334/1/MN.***
- 3. A permanent injunction is hereby issued restraining the Defendant, his agents and/or servants and/or assigns and any other persons who are claiming or may claim through the Defendant from interfering with the Plaintiff's quiet possession, occupation enjoyment and/or ownership of the suit house situate on Plot No. 334/1/MN.***
- 4. Costs of the suit to be paid by the defendant***

DATED, SIGNED AND DELIVERED AT MALINDI THIS 23RD DAY OF MARCH, 2022.

M.A. ODENY

JUDGE

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Judgment has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.