



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL SUIT NO. 1226 OF 2014

IN THE MATTER OF THE ESTATE OF NJENGA MARUGA (DECEASED)

GRACE NJAMBI WARIUNGIPLAINTIFF

VERSUS

LILIAN WAMBUI CHEGEDEFENDANT

JUDGMENT

Introduction

1. This suit was commenced by way of an Originating Summons dated 16th September, 2014. In the Originating Summons, the Plaintiff raised the following issue for determination;

a) Is the Plaintiff entitled to ownership and transmission of L. R. No. Kiambaa/Thimbigua/2483 from the Estate of the late Njenga Maruga the subject matter of Kiambu Chief Magistrates Succession Cause No. 22 of 2012?

2. In response to the Originating Summons, the Defendant filed a Replying Affidavit which formed the basis of her defence. The Originating Summons proceeded by way of oral evidence in which the Plaintiff and the Defendant adopted their respective affidavits.

The Plaintiff's Case

3. The Plaintiff PW1, informed the court that she is the wife of the late Francis Waruingi Njoroge (deceased) who died on 4th August, 2013; that her deceased husband bought land parcel number Kiambaa/Thimbigua/2483 (the “**suit property**”) from Njenga Maruga who died on 8th October, 2003 before transferring the suit property to her husband and that her late husband had a written sale agreement dated 5th February, 2000.

4. According to the Affidavit of PW1, the purchase price of Ksh 480,000/- was paid and that her and her late husband took exclusive possession of the suit property on 5th February, 2000, fenced it and have been cultivating it.

5. It was the evidence of PW1, that the land was vacant because the late Njenga Maruga had relocated together with his sons to Mutonyora in Nyandarua county; that the entire family of the late Njenga Maruga acknowledged and witnessed the sell and passing over of the suit property and that she has had uninterrupted possession of the land.

6. According to PW1, the late Njenga Maruga gave her husband the original Title Deed for the suit property; that due to the unwillingness of the family of Njenga Maruga to meet the succession expenses, his children encouraged her late husband to apply for succession in his capacity as a purchaser of the suit property and that his sons Joakim Njenga and Nicholas Njenga accompanied his late husband to the Chief who issued him with a recommendation letter.

7. It was the evidence of PW1 that on 20th April, 2011, In her presence, Joakim Mwangi Njenga and Nicholas Kiarie Njenga, the sons of the late Njenga Maruga, instructed the Chief to issue to her late husband a letter of recommendation to facilitate the filing of the Succession Cause and that the said sons of the late Njenga gave out their respective copies of their identity cards.

8. According to PW1, it was long after her late husband had filed the succession Cause to the Estate of Njenga Maruga that one of the daughter of Maruga came up with an objection and dissuaded her siblings from further consenting to the distribution of the Estate on the ground that the family had not been consulted; that her late husband had to cite the survivors of the late Maruga and that he filed Kiambu Succession Cause Number 22 of 2012 for that purpose.

9. It is the Plaintiff's case that her late husband was issued with a certificate of confirmation on 2nd January, 2013; that on 18th June, 2014, the court recalled the Grant that had been issued to her late husband and granted the same to Lilian Wambui Chege and that the said Lilia Wambui Chege should transmit the land to her.

10. PW3 informed the court that he witnessed the signing of the agreement between the late Njenga Maruga and Francis Njoroge Wariungi on 15th October, 2002.

The Defence case

11. The Defendant, DW1, informed the court that she is the daughter of the late Njenga Maruga; that the Plaintiff's late husband, Francis Waruingi Njoroge filed Succession Cause Number 22 of 2012 at Kiambu Law Court in respect of the Estate of Njenga Maruga without the knowledge and consent of the children of the said Njenga Maruga and that the Plaintiff and her late husband are not members of their family.

12. According to DW1, the Plaintiff misled the lower court into issuing to them the letters of administration; that during the proceedings in the lower court, the Plaintiff did not bring up the issue of sale and purchase of the suit property and that this suit should be dismissed.

13. DW1 admitted that on 5th February, 2000, her late father entered into an agreement of sale in respect to the suit property with the late Francis, the Plaintiff's husband and that the Plaintiff's late husband was to pay her late father Ksh 480,000/- being the purchase price.

14. According to DW1, they agreed that the purchase price was to be paid within six (6) months; that in the meantime, the Plaintiff's late husband was allowed to lease the land which he did in July, 2000 and that then the purchase price was never paid.

15. It was the evidence of DW1 that his late father only signed the agreement of 5th February, 2000 and 8th April, 2000; that her late father did not sign any other agreement and that Mrs. Virginia Wangui Njenga, her mother, died in the year 2010.

16. In cross-examination, DW1 stated that the land in question is plot number 2483; that the Plaintiff's late husband was unable to buy the land and only wants to grab it and that other than the agreements of 8th February, 2000 and 8th April, 2000, the rest of the agreements produced by the Plaintiff are forgeries.

Submissions

17. The Plaintiff's counsel submitted that the Plaintiff filed pleadings, testified and produced evidence to prove that her late husband, Francis Wariungi Njoroge purchased parcel of land known as Kiambaa/Thimbigua/2483 from the late Njenga Maruga and that he made payments for the said land between 5th February, 2000 and 9th October, 2008.

18. According to counsel, upon signing the agreement of 5th February, 2002, Ksh 50,000 was paid in cash while the balance was paid in instalments which was acknowledged in subsequent agreements.

19. It was submitted that the Defendant was unable to explain why she was picking on two agreements out of the bundle yet she was not at the negotiating table; that Mr. Njenga Maruga dealt with the suit property as he pleased and that when the late Njenga Maruga enjoyed the Kshs 480,000/- from the Plaintiff's late husband, it was in exchange of the suit property.

20. The Defendant submitted that her late father did not at any point sell the suit property to the Plaintiff's late husband; that although his late father entered into a sale agreement of 8th February, 2000 with the late Francis, for the sale of the suit property for Kshs. 480,000/-, he paid only Kshs 50,000 on 9th February, 2000.

21. According to the Defendant, on 8th April, 2000, the late Francis Waruingi made a further payment of Kshs. 10,000 towards the purchase of the suit property; that the late Francis failed to pay the balance on the completion date as agreed and that it was later agreed that the sale agreement be terminated.

22. The Defendant submitted that it was agreed that his late father leases the land to the Plaintiff and her husband for a rent of Kshs 5,000 per year which lease was done in writing and that the Plaintiff retained the copies of the lease.

23. According to the Defendant, a keen look at the acknowledgement notes allegedly executed by the late Njenga Maruga between 15th September, 2000 and 15th October, 2000 conveniently omits the signatures of some of the witnesses to the agreement for sale including Virginia Wangui Njenga and Stephen Maruga Njenga and that the signatures of Njenga Maruga in the alleged documents do not match with the one in the agreement for sale dated 5th February, 2000.

Analysis and Findings

24. Upon reading the pleadings and submissions, and after hearing the evidence of the parties, the only issue for determination in this matter is whether the Plaintiff is entitled to ownership and transmission of L. R. No. Kiambaa/Thimbigua/2483 from the Estate of the late Njenga Maruga.

25. It is not in dispute that by way of an agreement dated 5th February, 2000, the Plaintiff's late husband, Francis Waruingi Njoroge, entered into an agreement of sale in respect of the suit property with the Defendant's late father, Njenga Maruga.

26. The agreement of sale dated 5th February, 2000 provided that the purchase price for the suit property was Ksh 480,000/-. The agreement acknowledged that Njenga Maruga had received a deposit of Kshs.50,000/-, and that the balance of the purchase price was payable in the month of August, six months after the signing of the agreement.

27. It is also not in dispute that the Plaintiff and her husband took possession of the land, and were given the original Title Deed which they still hold. According to the evidence of the Plaintiff, her late husband paid the balance of the purchase price by instalments, which instalments were acknowledged in writing.

28. The first agreement acknowledging the payment of Ksh 10,000/- towards the purchase price is dated 8th April, 2000. The said agreement has not been disputed by the Defendant. Indeed, according to the Defendant, the agreements that her late father signed are the ones dated 5th February, 2000 and 8th April, 2000.

29. The Plaintiff produced in evidence the agreement dated 15th September, 2000 for the payment of Ksh 62,000; 14th May 2001 for the payment of Ksh 10,000; 20th October, 2001 for the payment of Ksh 45,000; 19th January, 2002 for the payment of Kshs 3,000; 29th January, 2002 for the payment of Ksh 6,500; 13th March, 2002 for the payment of Kshs.13,000; 16th April, 2002 for the payment of Ksh. 5,000 and several other agreements running until 4th October, 2008.

30. In the agreement dated, 4th October, 2008, the Defendant's late mother, Virginia Wangui Njenga, purportedly handed over to the late Francis Waruingi Njoroge the Original Title Deed, the said Francis Waruingi having finished paying the purchase price as per the sale agreement of 5th February, 2000.

31. Although the Defendant disputed that his late father signed the subsequent agreements acknowledging receipt of the various deposits, she did not produce in evidence an expert's handwriting report to prove that.

32. Indeed, the Defendant did not produce in evidence the lease document to show that upon the Plaintiff defaulting in payment of the purchase price, her late father allowed the Plaintiff to cultivate the land at a rent of Kshs.5,000, per year which rent was to be deducted from the paid purchase price.

33. This being a civil case and proof being on preponderance of probabilities, it was incumbent upon the Defendant to controvert the facts presented by the Plaintiff. The Defendant did not present her version of how the sale transaction was conducted and concluded, and how the sale of the suit property mutated into a lease agreement before rescinding the sale agreement.

34. The evidence by the Plaintiff that her late husband purchased the suit property and paid the purchase price by way of instalments has not been controverted by way of evidence. Indeed, the Plaintiff and her late husband were not only put in possession of the land, but were also given the original Title Deed.

35. The Plaintiff's evidence that her husband purchased the suit property and paid the entire purchase, albeit out of time; is further fortified by the fact that the Defendant or her late father never demanded in writing for the payment of the purchase price. In fact, there is no evidence to show that the Defendant rescinded the sale agreement for non-payment of the balance of the purchase price.

36. Having considered the evidence on record, it is the finding of this court that the Plaintiff has proved her case on a balance of probabilities.

37. For those reasons, the Plaintiff's Originating Summons is allowed as follows;

a) The Plaintiff is entitled to ownership and transmission of parcel of land known as Kiambaa/Thimbigua/2483 from the Estate of the late Njenga Maruga the subject matter of Kiambu Chief Magistrate Succession Cause Number 22 of 2012.

b) The Defendant to transfer parcel of land known as Kiambaa/Thimbigua/2483 by way of transmission to the Plaintiff within 21 days.

c) In case the Defendant does not transfer by way of transmission the said land to the Plaintiff within the said period, the Deputy Registrar of this Court to sign all the documents in respect of the transfer of parcel of land known as Kiambaa/Thimbigua/2483 to the Plaintiff.

d) The Defendant to pay the costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 21ST DAY OF APRIL, 2022

O. A. ANGOTE

JUDGE

IN THE PRESENCE OF;

MR. WATI FOR THE PLAINTIFF

MS. LILIAN WAMBUI FOR THE DEFENDANT

COURT ASSISTANT: JOHN OKUMU