



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

Civil Case 87 of 2008

TERESIAH NJERI MUNGA.....PLAINTIFF

VERSUS

PATRICK MUNGA MANJARI.....DEFENDANT

JUDGMENT

The plaintiff has brought this action against her husband, the defendant for a declaration that she is the lawful owner of BAHATI/KABATINI BLOCK 1/7998 and all the developments therein. In addition, the plaintiff seeks that the respondent be restrained by an order of permanent injunction from interfering with the suit property.

Although the defendant filed a statement of defence in which he averred that the plaintiff obtained the registration of the suit property in her name fraudulently, he did not attend the court when the matter came up for hearing despite service.

The matter proceeded *ex parte* with the plaintiff explaining she purchased the suit property from the previous owner, Dominic Njenga Muniu at a consideration of Kshs.80,000/=. The property was subsequently transferred to the plaintiff and a title deed issued. With her family, namely, the defendant and their children, the plaintiff moved and occupied the newly-acquired property. Two years later on 18th May, 2008, at about 6a.m., the defendant who had moved out, went to the property accompanied by over 10 goons intending to evict the plaintiff and her children. The defendant and the goons broke into the property and carted away household goods which they loaded onto a pick-up vehicle No.KAK 344Y. The plaintiff who had escaped with her children was able to alert the police, the pick-up motor vehicle was intercepted and the items taken to Bahati Police Station,

Because of these threats and the fact that the defendant no longer lives with the plaintiff, the latter is apprehensive that without restraining orders, the defendant will continue to harass her and her children.

The plaintiff and the defendant solemnized their marriage on 13th June, 2003 under the Marriage Act, Cap 150. It was the plaintiff's case that on 25th April, 2005, she purchased the suit property from one Dominic Njenga Muniu. She produced a sale agreement together with copies of the seller's identity and pin cards to prove this fact. The title deed is in her name which constitutes *prima facie* evidence that she is the owner of the suit property.

I reiterate that the defendant in his statement of defence has stated that the property is his and that he exchanged it with plaintiff's father who was given another parcel of land which the latter sold; that the plaintiff has fraudulently caused the property to be registered in her name. Because he did not bring evidence to prove these matters, his claim must fail. The marriage between the plaintiff and the defendant has not been dissolved even though there is uncontroverted evidence that he is cohabiting with another woman having deserted his family.

Section 17 of the Married Women's Property Act, 1882 provides that:

“In any question between husband and wife as to the title to or possession of property, either party may apply by summons or otherwise in a summary way to any judge of the High Court of justice..... and the judge of the High Court may make such orders with respect to the property in dispute, and to the costs of and consequent on the application as he thinks fit.”

Emphasis supplied).

Interpreting the foregoing provision, **Lord Morris of Borth-Y-Gest** said in **Pettitt V. Pettitt**, (1969) 2 WLR 966 at P.975 H that:

“One of the main purposes of the Act of 1882 was to make it fully possible for the property rights of parties to the marriage to be kept entirely separate. There was no suggestion that the status of marriage was to result in any common ownership or co-ownership of property.

All, this in my view, negative any idea that Section 17 was designed for the purpose of enabling the court to pass property rights from one spouse to another.”

See also **Peter Mburu Echaria V. Priscilla Njeri Echaria**, a Civil Appeal No.75 of 2001.

The plaintiff has proved that she personally, to the exclusion of the defendant, acquired the suit property and I come to the conclusion that she is the lawful owner of the suit property.

In view of the defendants conduct on 18th May, 2008, it is ordered that he will be restrained by an order of injunction from interfering with the plaintiff's quiet possession of the suit property.

Costs to the plaintiff.

Dated, Signed and Delivered at Nakuru this 2nd day of May, 2012.

**W. OUKO
JUDGE**