



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL CASE NO.248 OF 2007**

**ANASTACIA WANJIRU KIMANI.....PLAINTIFF**

**VERSUS**

**TERESIA WANJUHI KIMANI.....DEFENDANT**

**JUDGMENT**

The plaintiff, **Anastacia Wanjiru Kimani** has instituted this suit against her mother, Teresia Wanjuhu Kimani for a declaration that the latter holds KAMARA/MAU SUMMIT BLOCK 4/147 (MLIMA) in trust for the plaintiff and her brothers and a further order that the defendant transfers  $\frac{1}{3}$  of the suit property to the plaintiff.

The defendant was duly served with the suit, the summons and the hearing notice but took no steps to defend the action. Interlocutory judgment was consequently entered and the plaintiff testified on 3<sup>rd</sup> February, 2011. It is her claim that her father, the husband of the defendant died in 1961 survived by among others, the defendant and the plaintiff. He also left behind three parcels of land including No. NDARUGU/GACHARAGE/213. The plaintiff further stated that following the death of her father, she (the plaintiff) was to inherit 1.1 acres from NDARUGU/GACHARAGE/213. Her brothers were similarly given their respective shares after the sub-division of the above property.

The plaintiff and her brothers subsequently sold their portions to a step brother, Peter Karanja Kimani and instructed the defendant to purchase the property in dispute herein, namely KAMARA/MAU SUMMIT BLOCK 4/147 (MLIMA). They also agreed that the property would be registered in the name of the defendant and that was done with the title deed being issued to the defendant. On the property, each person was physically allocated a parcel which they have been in occupation of since it was purchased. The property has not been surveyed for purposes of sub-dividing and distributing it to the beneficiaries.

I have considered the above evidence, which has not been challenged by the defendant. However, that notwithstanding, the burden remained upon the plaintiff to prove her claim against the defendant on a balance of probability. For instance, it was incumbent upon her to demonstrate that the defendant is registered the proprietor of the disputed property as her (the plaintiff's) trustee. Whether or not the defendant was a trustee is a matter of evidence. The evidence presented by the plaintiff was to the effect that the suit property was purchased with the proceeds realized from the sale of her deceased father's property NDARUGU/GACHARAGE/213.

I am satisfied from the plaintiff's evidence that the above property was distributed to the dependant's of her deceased father in Thika Resident Magistrate Succession Cause No.123 of 1983. It is also apparent from a copy of sale agreement executed between the defendant and Peter Karanja Kimani that 3.3 acres from that parcel of land was sold by the defendant. Finally, it is noted that the title deed was issued on 21<sup>st</sup> March, 1994 in the name of the defendant. The plaintiff was duty bound to link the property in dispute with the sale of 3.3 acres to Peter Karanja Kimani. This nexus is missing. For instance, I find no logical explanation why, first, the sale agreement was between the defendant and Peter Karanja Kimani and secondly, why the disputed property was registered in the name of the defendant yet the properties involved had been distributed to the plaintiff, David Boro and Peter Karanja (not the same as Peter Karanja Kimani), adults, who were competent to dispose of their respective interests. There is equally no

logic in the evidence of the plaintiff that although the property is in the defendant's name yet it is the plaintiff who keeps the title deed and further that the defendant has been hostile to any attempts to subdivide the property.

The defendant was to get her share from a different parcel altogether according to the Thika succession cause. She was not even the administratrix of her husband's estate. The plaintiff did not call any of her siblings to strengthen her case by confirming that it was indeed their respective parcels of land distributed in the Thika succession cause that were the subject of sale by the defendant; that the suit property was acquired with those proceeds of sale of their respective parcels and also to explain why it was necessary to have the property registered in the name of the defendant. The evidence presented by the plaintiff falls below the standard of proof in a civil case.

For these reasons, the claim fails and is dismissed. I make no orders as to costs.

**Dated, Delivered and Signed at Nakuru this 8<sup>th</sup> day of April, 2011.**

**W. OUKO  
JUDGE**