



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Civil Suit 76 of 2000

GERALD NGEERA M'MBUI.....APPELLANT

V E R S U S

M'ECHIENGI KIRIGIA.....RESPONDENT

JOYCE MWATHIRA M'ECHIENGI.....APPLICANT

JUDGEMENT

This judgment relates to an appeal by the Appellant dated 22.09.2005 against the judgment of the learned senior Resident Magistrate in Meru Chief Magistrates Court Civil Case No. 907 of 2000. In that suit the plaintiff /now Respondent sued the Respondent (now appellant) and the County Council of Nyambene for orders of an injunction to restrain the Defendants from selling transferring or otherwise alienating the plot known as Plot No. 341C at Miathene Market. In her Judgment delivered on 21.09.2005, the lower court found in favour of the Plaintiff and issued orders of permanent injunction

against the appellant herein. The claim against the County Council of Nyambene was dismissed.

Being aggrieved with that decision the appellant has appealed to this court on nine (9) grounds. All these grounds revolve on the question whether or not the Appellant bought plot No. 341 C from the Respondent who is now deceased and is represented by his widow, Joyce Mwathira M'Enchengi.

The Appellant's counsel Mr. Rimita has in his written submissions summarized the facts of the case. Mr. Elijah Ogoti, counsel for the Respondent has in his written submissions agreed with that summary. To recapitulate the facts common to both the Appellant and the Respondent Plot No. 341 C Miathene Market, was part of one plot originally known or referred as plot No. 341. That plot was owned by the Defendant (Respondent) now deceased as noted above. Miathene Market expanded, this plot no doubt with others was absorbed into the market under the jurisdiction initially of the greater County Council of Meru, and later upon its creation, of the County Council of Nyambene.

I have examined the evidence of the Respondent, and I observe that, it is rather short in explaining how plot No. 341 became Plot No. 341 A, 341 B, and 341 C. That explanation is given by the evidence of D.W.1(now the Appellant). It corroborated the Respondents evidence in cross-examination by Mr. Anampiu for the 2nd Defendant, in which he admits and reiterates, that there are 3 plots out of plot No. 341. The Appellant testified that plot No. 341 C at Miathene Market belonged to him and that he acquired it in April 1981. He explained that the Respondent had leased Plot No. 341 A to him in 1979. The plot was later sub-divided into Nos. 341, A 341 B and 341C. The sub division was approved under Min. No. 10/81 B(b) of the Minutes of the Town planning and Housing Committee meeting of the Nyambene County Council held on 21st April 1981 the minute reads-

Min. No. 10/81 (B) (b)

“An application Micheck Kirigia for permission to divide in plot No. 341 A. A shop at Miathene own land to read “A” M’chengi Kirigia and “C” Gerald Ngeera was approved.”

D.W. 3 (Joseph Kobia) testified to the above effect. He produced both the application for subdivision and trustee and the above extract of the minutes at which the approval for the sub-division and transfer was granted in accordance with the Respondent’s application and not the appellant. The lower court found that the Nyambene County Council was wrongly filed and dismissed the action against it.

It seems to me a little strange that the action founded on the same facts the same subject matter having been dismissed against one of the two Defendants, the court should go ahead and find against the other. Defendant whereas that may be possible say in misjoinder of parties, in this case, the actions of the 2nd Defendant were intricately connected with that of both the plaintiff himself and the Defendant. Dismissal of the suit against one party should have led to the dismissal of suit against the other defendant as well; the main allegation having been conspiracy to commit a fraud and take away the Respondents plot. It is not possible to conspire alone.

In this case, it is clear from the reading of both the evidence of the plaintiff and his witnesses, that they gave unreliable evidence and were less than candid. The evidence of the appellant and of his witnesses is clear. The appellant was already in possession of plot 341C, he had leased it from the

appellant, he used to pay shs. 200 per month. When the Respondent (deceased) to sell it, the appellant called his friends. D.W.3 (Jeremy Muriuki Gerald) although a son of the appellant, D.W.2 (Nabea Munyori) witnessed the payment of shs.8,000/- by the Appellant to the Respondent. Their evidence was not shaken in cross examination by Mr. Ogoti, counsel for the Respondent. The transfer was completed in writing with the sub-division and transfer of the plot in the records of Nyambene County Council. The respondent put his thumbprint to these forms and he cannot deny them.

In the upshot therefore I agree with the submissions of Mr. Rimita, learned counsel for the appellant, that the learned trial magistrate misread and misunderstood the nature of land transaction relating to market and urban plots managed or subject to the management and development of local authorities such as county councils. In such transactions the approval of sub division and transfer as recorded in the books or registers of the local authority is a valid transaction, subject only to issue of title by the Commissioner of Lands.

In this matter therefore I find and hold that the Respondent the late M'Enchengi Kirigia had sold Plot No. 341C to the appellant for the consideration or price of Ksh.8000/- and that the transaction was duly approved and recorded in the minutes of the town Planning and Housing Committee Meeting of the Nyambene County Council held on 21st April 1981.

Having come to that conclusion the Appellants appeal dated 22.09.2005 succeeds. The Appellant shall also have the costs of this Appeal and the costs below.

There shall be orders accordingly.

Dated signed and delivered at Meru this 15th day of July 2010

M. J. ANYARA EMUKULE

JUDGE.

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