



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 964 of 1986

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CIVIL CASE NO.964 OF 1986**

ROBERT KINUTHIA MUNGAI.....PLAINTIFF
VERSUS
HANNAH WAIRIMU MWANGI.....1ST DEFENDANT
SULEIMAN ZAKARIA MWANGI alias
SULEIMAN MWANGI alias MWANGI MUTHEE.....2ND DEFENDANT
MWANGI NUTHI.....INTERESTED PARTY

RULING

This is a very old case. It involves a parcel of land, land reference No.36/111/1225 situate at Eastleigh, Nairobi. In a plaint dated 20th March, 1986 and filed on 25th March, 1986 and amended on 16th July, 1992, the plaintiff sought the following orders;

- a) A declaration that the 1st defendant holds one third of the said suit property in trust for the plaintiff.
- b) Proper and true account of the said rental income from the date of the said property was purchased until now be rendered by the defendant to the plaintiff.
- c) A declaration that the said trust as far as it concerns the plaintiff is at an end and the plaintiff's said share shall vest in the plaintiff.

On 16th December, 1999 Alouch J. (as she then was) delivered a judgment in favour of the plaintiff. The learned judge concluded in the said judgment as follows; **"I am satisfied that the plaintiff's case has been proved on a balance and I proceed to grant prayers a, b, c, d, and e of the amended plaint dated 16th July, 1992."**

The defendants according to the record moved the court to set aside the said judgment but on 12th September, 2002 the said application was dismissed by the same learned judge. I have not seen any evidence on record that the court was moved to review the said judgment at any stage neither is there any evidence that the aggrieved party filed any appeal.

There is now an application before me dated 1st February and filed on 2nd February, 2007 seeking two main orders. These are;

- a. The piece or parcel of land known as Land Reference No.36/111/1225 Eastleigh, Nairobi be sold.
- b. A receiver be appointed to manage the said land, collect the rent and pay all the outgoings pending the sale of the said land.

The application is opposed and the respondents have filed replying affidavits thereto alongside the submissions of counsel on record.

My first observation, with respect, is that those prayers are inconsistent with the prayers set out in the plaint which, in any case, were granted in favour of the plaintiff. To address the same issues, that is in the application dated 1st February, 2007 would be re-opening the pleadings set out in plaint and which were settled by the judgment of Alouch J. (as she then was).

With profound respect, the matters being canvassed in this application have been covered in the same judgment and this court is *functus officio*. I have no jurisdiction to re-open those proceedings and I decline to address the issues any further.

The application is therefore dismissed with costs to the respondents and the interested party.

Orders accordingly.

Dated, signed and delivered at Nairobi this 25th day of October, 2010.

A. MBOGHOLI MSAGHA

JUDGE