



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Suit 1306 of 1989

WANJIRU WAWERU.....1ST PLAINTIFF

MBUTHI KARIUKI.....2ND PLAINTIFF

VERSUS

WILLIAM KAMAU GIKANDI.....DEFENDANT

JUDGMENT

The 1st plaintiff and the defendant are brother and sister. They had a sister who is now deceased called **VERONICA TUTU GIKANDI**. The 1st plaintiff and Veronica purchased the suit land from the father of the 2nd plaintiff who is now deceased. The father of the 2nd plaintiff died before he had transferred the suit land. The 2nd plaintiff applied for letters of administration in respect of the estate of his deceased father and was issued with the grant. He distributed the estate to the entitled beneficiaries. He decided to retain the suit land in joint names and it was registered in his name and that of the 1st plaintiff but he has no claim over the land. He only came into this suit because of the joint registration when **VERONICA** died, the defendant applied and was issued with letters of administration in respect of her estate in Succession Cause No.148 of 1984. She was not married nor did she have any child but she had a lot of property as indicated in the list of assets. The estate was distributed among 11 beneficiaries. The defendant was one among the beneficiaries. He got:

- (i) One plot in Kiambu Farmers Co-operative Society measuring 7.5 acres.
- (ii) Rent money from Plots **L.R. DAGORETI/RIRUTA/2473** and **LR DAGORETI/RIRUTA/547** amounting to Shs.384,500/= and Shs.147,000/= respectively. The total amount as shown was Shs.531,500/=.
- (iii) To share a portion of land 0.25 acres allotted to **HANAH MUTHONI in plot LR DAGORETI/RIRUTA/547** plus development thereon.
- (iv) A portion of plot **LR DAGORETI/RIRUTA/547** measuring approximately 0.25 acres. The 1st plaintiff is not a beneficiary in her late sister's estate.

This distribution is the basis of the defendant's defence and counter-claim. The plaintiff in her evidence told the court that she had purchased the suit land jointly with her sister **VERONICA TUTU**. She had first negotiated the purchase price but she did not have sufficient funds. She approached her sister to assist her. The purchase price was Shs.7,000/=. She paid Shs.4,500/= while **TUTU** paid Shs.2,500/=. The acreage was about 2.25 acres. They had purchased the suit land from the father of the 2nd plaintiff but he died before he had transferred the suit land to them. They had put up rental rooms on the suit land from where they collected rent. When **VERONICA TUTU** died, the defendant the whole of the suit premises was left to her as it was held jointly and was undivided.

But the defendant came there by force and evicted her and put up 50 semipermanent rooms and 9 permanent rooms. She urged the court to order that the defendant vacates from the suit land or he be evicted. She prays for judgment in her favour with costs of the suit.

The 2nd defendant (PW1) as I had stated earlier has no claim in the suit land. In his evidence he told the court that the 1st plaintiff **WANJIRU WAWERU** had purchased the suit land from his late father but who died before he could transfer the land to her.

When he applied for the grant to administer the estate of his late father, he decided to register the suit land in joint names with a view to transferring it to the 1st plaintiff. He witnessed when his late father sold the 1st plaintiff the suit land and he showed her where to settle and she took possession. During the negotiations he never saw Veronica TUTU.

The defendant **WILLIAM KAMAU GIKANDI** in his evidence told the court that the 1st plaintiff is his sister as well as **VERONICA TUTU** now deceased. She never got married nor did she have any child. She died in 1984. When she died she left money which were distributed. The grant was confirmed and he produced the grant of confirmation in succession Cause No.148 of 1984. The rent collected so far from the rental structures is Shs.531,500/= which is the subject matter of the counter-claim. The 1st plaintiff was not included in the estate of the deceased **VERONICA TUTU GIKANDI**. The 1st plaintiff was entitled to 9.6% while the late Veronica Tutu was entitled to 90.4% out of the suit land which is 2.91 acres (**LR NO.DOGARETI/RIRUTA/2473**) and the defendant is only claiming the portion of his late sister (Veronica Tutu) as his entitlement through Succession Cause No.148 of 1984.

There is no dispute that the 1st plaintiff is a sister to the defendant as well as the late Veronica Tutu. It is conceded that the 1st plaintiff and the late TUTU contributed to purchase the suit land **LR NO.DAGORETI/RIRUTA/2473**. The only dispute is how much each contributed. But the evidence of the plaintiff that she contributed Shs.4500/= out of Shs.7000/= and the late **TUTU** contributed the balance of Shs.2500/= is not contraversed. The 1st plaintiff negotiated the sale and she asked the hand of her sister **TUTU** to assist to enable her purchase the suit land. The defendant did not contributed anything towards the purchase of the suit land. He only comes in through the estate of **TUTU**. When a property is held by two parties jointly and is undivided and the other party having died leaving no issue biological or adopted, the property reverts to the surviving partner.

The 1st plaintiff was therefore entitled to the whole suit land including all the structures thereof. The defendants' claim therefore being based on the sums of rent collected from structures which were put up by the 1st defendant and the late TUTU therefore cannot be sustained.

As I have stated above the 1st plaintiff is entitled to the whole of the suit land including all the structures that she put up with the late TUTU. But taking into account that the parties are brother and sister and the defendant having put up some permanent rooms for rental purposes. I allow him to retain that space limited only to where he has put permanent structures and should not be more than ½ acre. This is on humanitarian grounds.

I therefore enter judgment for the 1st plaintiff for the whole of the suit land including all the structures which were put up by her and the late TUTU less ½ acre where the defendant has erected structures. Otherwise the defendant's counterclaim is dismissed. I order that the District Surveyor do visit locus and subdivide and fix the boundaries. The 1st plaintiff is entitled to the costs of the suit and I so order.

Delivered and dated at Nairobi this 13th day of July 2005.

J.L.A. OSIEMO

JUDGE