



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 1249 OF 2015 (FORMERLY HCCC NO. 215 OF 2007)

MARY MUTHONI NJUGUNA.....PLAINTIFF

=VERSUS=

MUGUMO NYAKINYUA KIAMBAA CO. LTD.....DEFENDANT

FREDRICK MUTHORA NDUNGU.....INTERESTED PARTY

JUDGMENT

The plaintiff brought this suit against the defendant on 2nd March, 2007 seeking the following reliefs;

- (i) That the plaintiff is the registered owner of shareholding certificate number 379 and the same should be reflected on the defendant's records.
- (ii) An order compelling the defendant to forward to the plaintiff all the proceeds from the shareholding certificate number 379.
- (iii) Costs of the suit.
- (iv) Any other relief that this court may deem fit and just to grant.

The plaintiff averred that one Rebecca Wanjiku Muthiora (deceased) (hereinafter referred to only as "the deceased" was a shareholder of the defendant and had been issued with share certificate number 379. The plaintiff averred that on or about 26th October, 1994, the deceased transferred her shares in the defendant to her and on 30th November, 1995, the defendant issued her with a new share certificate number 535 in respect of the shares that the deceased held in the defendant. The plaintiff averred that subsequently, the defendant transferred some of the shares of the deceased that had been transferred to the plaintiff to third parties without the plaintiff's consent or authority. The plaintiff averred that as a result of the defendant's said unlawful act, she had suffered loss and damage.

The defendant filed a defence on 4th May, 2007 denying the plaintiff's claim in its entirety. The defendant admitted that the deceased was its shareholder and that the deceased had been issued with a share certificate number 379. The defendant averred however that the purported transfer of the deceased's shares in the defendant to the plaintiff was carried out fraudulently in which fraud the plaintiff was involved. The defendant averred that when the deceased discovered that she had been defrauded by the plaintiff, she rescinded the transfer of all the shares that she held in the defendant to the plaintiff and directed the defendant in writing to transfer to each of her sons through their wives who included the plaintiff one (1) plot that she was entitled to by virtue of the said shares. The defendant averred that it did not require consent from the plaintiff to transfer to third parties the said plots that the deceased was entitled to by virtue of her shares in the defendant since the plaintiff was not the sole owner of the said shares.

FREDRICK MUTHORA NDUNGU was added to the suit on 2nd November, 2011 as an interested party. On 25th January, 2018, the plaintiff's advocate informed the court that it had become necessary for the plaintiff to join to the suit persons to whom the defendant had transferred the parcels of land which the plaintiff was entitled to under share certificate number 379. The plaintiff's advocate asked for leave to amend the plaint. The plaintiff's application for leave to amend the plaint was allowed and the plaintiff was granted 14 days within with to amend the plaint. The plaintiff did not amend the plaint within the period that was prescribed by the court or at all.

At the trial, the plaintiff adopted her witness statement dated 18th April, 2012 as her evidence in chief. In the statement, the plaintiff stated that the deceased had 30 shares in the defendant in respect of which she was issued with a share certificate number 379. She stated that the deceased transferred the said shares to her and she was issued with share certificate number 535 on 30th November, 1995 in respect thereof. She stated that the shares that the deceased held in the defendant entitled her to three plots namely plot No. 379, Plot No. 984 and Plot No. 722. She stated that by virtue of the transfer of the deceased shares in the defendant to her, she became the owner of the three plots. The

plaintiff stated that she sold plot No. 722 to one, Henry Kuria and that the defendant had refused to effect the transfer of the said plot to the purchaser. She stated that the defendant had also sold plot No. 984 without her consent or knowledge. The plaintiff produced the documents attached to her list of documents dated 18th April, 2012 as exhibits.

The defendant did not tender evidence at the trial. The interested party gave evidence and called one witness, George Mbugua Muthiora (I. P. WI). I.P. WI told the court that the deceased was his aunt having been married to his paternal uncle. He stated that the shares that the deceased held in the defendant entitled her to three plots. He stated that the deceased was not aware that she was entitled to three plots. He stated that the deceased transferred her shares in the defendant to the plaintiff without knowledge of her entitlement under those shares. He stated that when the deceased learnt that those shares entitled her to three plots, she decided to transfer two of the plots to her other sons. He stated that of the three plots, only one remained. He stated that the plaintiff and one, Harrison Njuguna Muthiora had sold two of the said plots that were given to them by the deceased. He stated that the plot that was remaining belonged to the interested party and that the same was plot No. 722.

The last to give evidence was the interested party. He stated that the plaintiff was her paternal aunt and the deceased was her grandmother. He stated that the deceased owned plot No. 379, Plot No. 722 and Plot No. 984 through the shares that she held in the defendant. He stated that the deceased distributed the plots to various people. He stated that the plaintiff was given one of the plots that she sold and that he was given plot No. 722. He stated that the deceased directed the defendant through a letter dated 18th July, 2000 on how she wanted the plots distributed. He stated that the defendant's records were duly amended and he was issued with a title in respect of plot No. 722. He produced a copy of the said letter dated 18th July, 2000 and a copy of his title deed dated 5th April, 2016 as exhibits. He denied that the deceased gave the plaintiff all the three plots. He urged the court to dismiss the plaintiff's suit.

After the close of evidence, the parties were directed to make closing submissions in writing. The plaintiff filed her submissions on 4th February, 2020. I have not seen the defendant's and the interested party's submissions on record. I have considered the evidence on record and the submissions filed by the plaintiff. The issues that arise for determination in this suit in my view are the following;

1. Whether the deceased transferred her shares in the defendant to the plaintiff.
2. Whether the plaintiff was entitled to the parcels of land that the deceased owned by virtue of the shares that the deceased held in the defendant.
3. Whether the plaintiff is entitled to the reliefs sought in the plaint.

The first issue:

I am satisfied from the evidence before the court that the deceased transferred to the plaintiff the shares that she held in the defendant and that the defendant accepted the transfer and effected the same by transferring the said shares to the plaintiff and issuing her with a new share certificate number 535 dated 30th November, 1995. It is my finding therefore that the deceased transferred her shares in the defendant to the plaintiff.

The second issue:

It is not in dispute that the shares that the deceased held in the defendant entitled her to three parcels of land namely plot No. 379, plot No. 984 and plot No. 722. The deceased having lawfully transferred her shares in the defendant to the plaintiff, the plaintiff became entitled to the said parcels of land.

The third issue:

I had set out at the beginning of this judgment the reliefs sought by the plaintiff in this suit. The plaintiff is not entitled to prayer (a) in the plaint. As I have stated above, when the deceased sold her shares to the plaintiff, the deceased surrendered her share certificate number 379 and the plaintiff was issued with a new share certificate number 535 on 30th November, 1995. The court cannot therefore give a declaration that the plaintiff is the owner of share certificate number 379. The plaintiff has also sought an order compelling the defendant to release the proceeds of the shares that the deceased held in the defendant to her. Again this order cannot be granted. It is not disputed that the shares that the deceased held in the defendant which the deceased transferred to the plaintiff entitled the plaintiff to plot No. 379, Plot No. 984 and Plot No. 722. It came out in evidence that all the three plots have been transferred to third parties. That is why the plaintiff had sought leave to amend the plaint to join the said third parties to the suit which amendment the plaintiff did not make even after being granted leave. It follows therefore that the three plots that the plaintiff was entitled to are no longer registered in the name of the defendant. The defendant cannot therefore be compelled by the court to transfer the same to the plaintiff. On the issue of costs, the same is at the discretion of the court. As a general rule costs follow the event. In this case, the defendant was at fault. After transferring the deceased's shares to the plaintiff, the defendant had no right to transfer the properties that the deceased was entitled to by virtue of those shares to third parties without the plaintiff's consent. There was no evidence tendered by the defendant in proof of its allegation that the plaintiff acquired the deceased's shares in the defendant fraudulently. I will therefore condemn the defendant to pay the costs of the suit.

In conclusion, the plaintiff has proved wrong doing on the part of the defendant but the court is unable for the reasons already given to grant the reliefs sought against the defendant. As concerns, the interested party, the plaintiff did not seek any relief against him. The court cannot therefore make any order against him although he is a co-owner of one of the properties that the plaintiff was entitled to. The plaintiff's suit is therefore dismissed with costs to be paid by the defendant.

Dated and Delivered at Nairobi this 28th day of January, 2021

S. OKONG'O

JUDGE

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

N/A for the Plaintiff

N/A for the Defendant

Mr. Kabaka for the Interested party

Ms. C. Nyokabi - Court Assistant