



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MURANGA

ELC 39 OF 2020 (OS)

HANNAH WANJIRU GITAU.....PLAINTIFF

VS

LAND CONTROL BOARD - MURANGA(KANDARA).....DEFENDANT

JUDGEMENT

1. The Applicant filed an originating summons dated the 23/9/2020 seeking the orders as follows;

a. That this Honourable Court do certify the application as urgent and be heard expeditiously.

b. That this Court be pleased to make an order that the Murang'a Land Control Board sitting in Kandara do issue the consent for the transfer of LOC.4/NGUTHURU/414, Murang'a to Hannah Wanjiru Gitau the Donee and the Murang'a Land Registrar do transfer the said property to the Donee upon payment of all statutory fees and charges.

c. That this Honourable Court be pleased to vest the property known as LOC.4/NGUTHURU/414, Murang'a to Hannah Wanjiru Gitau.

d. That the costs be in the cause.

2. The application is supported by the grounds annexed thereto and the affidavit of the Applicant where she deposed that on the 28/1/2020 Gitau Kinguri donated to her the suit land vide a deed before his death on the 23/2/2020. That he executed all the documents before his death which he did without any coercion or undue influence.

That the land has no subsisting encumbrances on the title after the one that existed was vacated by the orders of the Court. That the agreement of 28/1/2020 was witnessed by Nathan Pala Advocate and Mercy Wanjiku Gathure and Muthoni Ndirwo. That the donor gave all the completion documents to the Applicant to with the title, ID card and PIN card.

3. That she has not been able to secure a land control board consent because the Land Registrar and the board require leave of the Court to be able to perform their statutory duties.

4. The application proceeded *ex parte* and the Applicant relied majorly on the reasons adduced in the affidavit

5. The Applicant claims to have served the application pursuant to the orders of this Court dated the 25/11/2020. I have perused the affidavit of service dated the 2/12/2020 wherein the process server has stated that he served the secretary of the land board who accepted service. That thereafter he proceeded to the land registrar's office where he effected service on the land registrar. None of the persons stated to have been served have been disclosed.

6. Order 4 of the CPR explains how service upon an institution is to be done. In the case of the Respondent section 6 of the Land Control Act gives the composition of the board as follows;

7. A land control board shall consist of –

a. The District Commissioner of the district in which the land control area or division is situated or a District Officer deputed by him in writing, who shall be chairman;

b. Not more than two public officer;

c. Two persons nominated by the County Council having jurisdiction within the area of jurisdiction of the board; and

d. Not less than three and not more than seven persons resident within the area of jurisdiction of the board, all appointed by the Minister.

8. In the case of the Respondent the right party to be served is the chairman of the Board and or all the members or the secretary of the land control board. In this case the service upon the Respondent is doubtful because it was not done as per the procedural laws.

9. Further the Applicant avers that the donor had done everything possible to effect the gift; that the gift had been perfected. I have perused the provisions of the section 6(1) of the Land Control Act which provides as follows;

“ Transactions affecting agricultural land (1) Each of the following transactions that is to say

(a) The sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area;

(b) the division of any such agricultural land into two or more parcels to be held under separate titles, other than the division of an area of [Rev. 2012] CAP. 302 Land Control 7 [Issue 1] less than twenty acres into plots in an area to which the Development and Use of Land (Planning) Regulations, 1961 (L.N. 516/1961) for the time being apply;

(c) Deleted by Act No. 22 of 1987, Sch. is void for all purposes unless the land control board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act. (2) For the avoidance of doubt it is declared that the declaration of a trust of agricultural land situated within a land control area is a dealing in that land for the purposes of subsection (1). (3) This section does not apply to - (a) the transmission of land by virtue of the will or intestacy of a deceased person, unless that transmission would result in the division of the land into two or more parcels to be held under separate titles; or (b) a transaction to which the Government or the Settlement Fund Trustees or (in respect of Trust land) a county council is a party. [Act No. 13 of 1980, Sch., Act No. 22 of 1987, Sch., Act No. 13. of 1988, Sch.]”

10. My reading of the above provisions leads me to conclude that the land control board may be applicable to a gift intervivos under any other disposal or dealing in agricultural land. Even if it is applicable then the Act states that either party may apply for the consent. There is no evidence that the board refused to grant the consent in which event she would be entitled to bring an administrative action by way of judicial review against the board. The Applicant has argued that the gift was complete as the donor had executed all the documents required to effect the interest in the Applicant. If that be true than there is nothing to stop the Applicant from perfecting the same.

11. It is not clear what orders the Applicant is seeking from the Court in this instance. The actions of the board are provided for by the Act and do not as a matter of course need a Court Order to perform a statutory duty unless they have been shown to have acted arbitrarily or contrary to a law.

12. In the end the application is unmeritorious. It is dismissed with no orders as to costs.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 14TH DAY OF JANUARY 2021.

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Plaintiff: Pala

Defendant: Absent

Kuiyaki: Court Assistant