



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MURANG'A

ELC 480 OF 2017

NANCY WANJIRU NGAHU..... PLAINTIFF

VS

JANE WAMBUI WANJEGE..... 1ST DEFENDANT

JOSEPH MUTHAIGA WANJEGE.....2ND DEFENDANT

NICHOLAS NGUGI WANJEGE.....3RD DEFENDANT

JUDGEMENT

1. Vide a Complaint dated the 13/2/2012 and filed on even date the Plaintiff sued the Defendants seeking to be declared the owner of the suit land (LOC20/GITHURI/205 suit land) and that the title held by the Defendants be cancelled and the Plaintiff be registered as proprietor in their place.
2. It is the Plaintiff's case that she purchased the suit land vide an agreement of sale dated the 11/9/1980 from one Peter Wanjege Ngugi, deceased. That the deceased died before he transferred the suit land to her notwithstanding that the land control board consent had been obtained. That upon the death of the seller the suit land devolved to the Defendants.
3. The Defendants denied the Plaintiff's claim vide the defence dated the 12/3/2012 and later amended on the 10/12/2019.
4. At the hearing of the suit the Plaintiff testified that she entered into an agreement of sale to purchase the suit land from the deceased Peter Ngugi Wanjege on the 11/9/1980. That land control board consent had been obtained in 1979 prior to the execution of the agreement of sale. That later the deceased avoided her and refused to transfer the suit land to her and withheld the original title and refused to execute a transfer in her favour. Despite numerous promises to complete the transaction, the said vendor died before effecting the transfer of the suit land to the Plaintiff.
5. Further that the suit land devolved to his wife and his two sons, the Defendants herein upon successful petition of succession of the deceased's estate. That she discovered this in 2011 and lodged a caution on the suit land.
6. In cross examination the Plaintiff admitted that the 1st Defendant died on the 23/10/12. That she relies on the agreement dated the 11/9/1980 as the basis of her cause of action against the Defendants. That she paid the purchase price to the deceased in cash though she had no evidence to support any acknowledgement. That the land control board consent was obtained on the 28/8/1979 before the agreement of sale was executed on the 11/9/1980.
7. Further that she was not put in possession of the suit land. That the same is being leased out to third parties by the Defendants.
8. The Defendants' defence was led by the 3rd defendant. DW1- Nicholas Ngugi Wanjege relied on his witness statement dated the 19/6/2020 and list of documents listed as DEX1-3. He informed the Court he is the son of Peter Ngugi Wanjege and Jane Wambui Wanjege, all deceased. That the land is registered in the name of the 1st defendant, deceased. That the Plaintiff did not pay for the land and therefore the sale was null and void. That the land control board consent obtained in 1979 before the sale agreement is irregular and that the Plaintiff has no claim over the suit land capable of being proved in a Court of law. That the 1st defendant lived on the suit land until her demise in 2012.
9. In cross examination, the witness informed the Court that the suit land had been charged to the bank, which loan was repaid in full by the family after the demise of their father and the title discharged.

10. Parties filed written submissions which I have read and considered.

11. In rather brief a submissions, the Defendant submitted that the sale transaction was properly executed save for the deceased that died before the transfer of the land was effected in the name of the Defendant. That the rights of the Defendant in the land survived the death of the vendor. That the Defendant has discharged the burden of proof and urged the Court to grant her prayers as set out in the Plaintiff.

12. The Defendants submitted that the claim of the Defendant is statute barred and the Court should dismiss it ab initio. That the cause of action arose in 1980 and the suit was filed in 2012, 32 years later. That the agreement of sale is null and void on account that no consideration passed between the parties.

13. Further that the suit against the 1st defendant abated in 2013 and there being no substitution the suit abated accordingly. That the 2nd and 3rd Defendants are not the registered owners of the suit land and therefore not suited.

14. Having read and considered the pleadings, the evidenced and the written submissions together with all the materials placed before me the issues for determination are;

- a. Whether the suit is statute barred.
- b. Whether the suit against the 1st Defendant is abated.
- c. Is there any cause of action against the 2nd and 3rd Defendants?
- d. What orders should the Court grant?
- e. Who meets the costs of the suit?

15. It is not in dispute that the suit land was owned by Peter Ngugi Wanjege as at the 31/12/1971. It is not in dispute that the said Wanjege died in 2008/2009 or thereabouts and his estate was succeeded by his late wife Jane Wambui Wanjege as per the uncontroverted evidence of DW1 and as pleaded by the Defendant.

16. The Defendant's case is that she is pursuing a purchaser's interest in the suit land that accrued in 1980 vide an agreement of sale between herself and Peter Ngugi Wanjege. The agreement is dated the 11/9/1980. It is the position of the defence that the claim of the Defendant is statute barred , the suit having been filed in 2012, 32 years later.

17. Section 7 of the Limitations of Actions Act provides as follows;

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person”

18. In the **IGA –vs- Makerere University [1972] E.A 65** where Mustafa, J.A held as follows:-

“A plaint which is barred by limitation is a plaint “barred by law”. Reading these provisions together it seems clear to me that unless the appellant in this case had put himself within the limitation period by showing grounds upon which he could claim exemption the Court “shall reject” his claim. The appellant was clearly out of time, and despite the opportunity afforded him by the Judge he did not show what grounds of exemption he relied on, presumably because none existed. The Limitation Act does not extinguish a suit or action itself but operates to bar the claim or remedy sought for, and when a suit is time barred, the Court cannot grant the remedy or relief sought.” (emphasis is mine)

19. The Law of Limitation of Actions is intended to protect Defendants against unreasonable delay in the bringing suits against them. The object of any limitation law is to prevent a Defendant from prosecuting stale claims on the one hand, and protect a defendant after he has lost evidence for his defence from being disturbed after a long lapse of time on the other hand. The effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case.

20. I have examined the agreement of sale alongside the Defendant's claim as pleaded and I concur with the 2nd and 3rd Defendants' position that the suit is statute barred. This suit ought to have been filed on or before 1992. Issue No a) is answered in the affirmative.

21. It is on record and admitted by the parties that the title of the deceased devolved to the 1st Defendant on the 1/7/2011 as per the green card and the copy of title adduced in evidence. It is also on record as per the death certificate that the 1st Defendant, the registered owner of the suit land died on the 23/10/2012. The Defendant failed to substitute the 1st Defendant pursuant to order 24 rule 4(1) of the Civil Procedure Rules. There is no evidence that the 2nd and 3rd Defendants are the legal administrators of the estate of the deceased, 1st Defendant.

22. Even if the 1st Defendant had been substituted, the suit would still have failed because of my holding in issue No a) above.

23. It therefore follows that in the circumstances of this case the suit against the 2nd and 3rd Defendants is untenable because no cause of action lies against them either in person or as legal administrators of the estate of the 1st Defendant. I say so because from the record the estate of the late Peter Ngugi Wanjege was fully administered and the suit land devolved to the deceased, 1st defendant.

24. Costs follow the event. The Defendant has failed in her claim. The suit is dismissed with costs to the 2nd and 3rd Defendants.

25. It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 14TH DAY OF JANUARY 2021

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Gichobi (HB) for Njuki

Ben Mwangi (HB) for T.M. Njoroge

2nd Respondent Absent

3rd Respondent Absent

Kuiyaki: Court Assistant