



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA

ELC CASE NO. 139 OF 2017

EAK.....PLAINTIFF

VERSUS

VKM.....DEFENDANT

J U D G M E N T

The message that this Court wishes to send to the widows in **ELDORET** is this: -

“Don’t touch VKM with a ten-foot pole. Avoid him at all costs.”

If **VKM** (the defendant herein) had filed a defence to this suit and attended the trial, this Court would have had an opportunity to caution him on what the scriptures say about men who take advantage of widows to steal from them. What widows need most at their time of distress is a helper who can shower them with love and offer support. Not deceitful and thieving men whose main goal is to strike at vulnerable widows.

In **MARK 12:40 (GNT)**, it is written: -

“They take advantage of widows and rob them of their homes, and then make a show of saying long prayers. Their punishment will be all the worse”

In **EXODUS 22:22 – 24** it reads: -

“You shall not afflict any widow or orphan. If you do afflict them, and they cry out to me, I will surely hear their cry, and my wrath will burn, and I will kill you with the sword and your wives shall become widows and your children fatherless.”

Unfortunately, however, this case proceeded ex – parte and the opportunity to read those scriptures to the defendant or hear his side of the story was lost. This Court cannot therefore be faulted for describing the defendant as a man who prys on widows to steal from them. And following the events leading to this case, the defendant relocated from **WEBUYE** to **ELDORET** hence my caution at the commencement of this Judgment to the widows of **ELDORET**. That will suffice for the caution and the Bible scriptures should the defendant read this Judgment.

The defendant is the registered proprietor of the land parcel **NO NDIVISI/MUCHI/xxxx** (the suit property situated in **WEBUYE** town) since 29th September 2005 as per the Certificate of Search which is among the documents filed by **EAK** (the plaintiff herein). By a plaint dated 30th October 2017 and filed herein on 2nd November 2017, the plaintiff pleaded that following the demise of her husband in 1997, she cohabited with the defendant in a **brief, abusive and tumultuous relationship** from which a child called **I** was born. Before that, she had four other children with her deceased husband. During her cohabitation with the defendant, she borrowed money from banks and together with her savings, managed to purchase the suit property which she developed for her accommodation and rental. Unknown to her, however, the defendant fraudulently and in abuse of the trust that she had in him registered the suit property in his names. Particulars of breach of trust and fraud are pleaded in paragraphs 7 and 8 of the plaint. She therefore moved to the Court seeking Judgment in the following terms: -

(a) The defendant is a constructive trustee of the plaintiff and her children in respect of the title NO NDIVISI/MUCHI/xxxx.

(b) The defendant be compelled to discharge his trust to the plaintiff by executing an instrument to transfer the title NO NDIVISI/MUCHI/xxxx in favour of the plaintiff and in default thereof this Court do execute the instruments of transfer to the plaintiff to hold in trust for herself and all her children.

(c) The defendant to pay the costs of this suit.

Together with the plaint, the plaintiff filed her statement and those of her witnesses **DICKSON TOM WANJALA (PW 2)** and **AGNETA MAKUNGU MWANGI (PW 3)**. She also filed her list of documents.

In his statement dated 24th October 2017 and which he adopted during the trial, **DICKSON TOM WANJALA (PW 2)** confirmed that he sold the suit property to the plaintiff who was introduced to her by his sister – in – law **AGNETA MAKUNGU (PW 3)**. He added that it was the plaintiff who paid the entire purchase price of Kshs. 110,000/=. This evidence was also corroborated by **AGNETA MAKUNGU MWANGI**. Both of them were later surprised to learn that the defendant had registered the suit property in his names.

I have considered the evidence by the plaintiff and her witnesses which is not controverted. I have also looked at the documents filed by the plaintiff in support of her case. They include Bank Statements, copies of her pay slips and letters from her Bank demonstrating that she indeed borrowed money which she was re – paying. I am therefore satisfied that not only did she purchase the suit property but that she also developed it through her own funds. Among the letters is one dated 5th October 2017 in which she addressed the defendant in the following terms: -

“5th October 2017

EAK

P.O. Box 25

WEBUYE

VKM

THRU THE ASSISTANT CHIEF MARAKA

WEBUYE

LAND PARCEL NUMBER NDIVISI MUCHI/XXXX

As you are well aware, I bought this plot and developed it so that my children could live in it with me and so that it could earn me and my children rent.

I am shocked that you abused my trust and registered the plot in the lands office under your name and I am told you now want to sell it.

I will not allow it.

This is to require you to go to the land office and transfer the plot number to my name within 14 days or else I will go to higher authorities and Court of law for justice.

Signed

EAK

ASSISTANT CHIEF

MARAKA”

There is nothing to suggest that the contents of that letter were denied through any rebuttal.

The plaintiff and defendant were not married. He therefore had no interest in the suit property arising out of any relationship and neither did he make any contribution, financial or otherwise, towards its development. As is now clear, he not only took advantage of her and abused the trust which she had in him but he proceeded to defraud her of the suit property. Believing the plaintiff’s un - controverted evidence as I do, I have no hesitation in making the finding that she has proved her case against the defendant as required in law.

There shall be Judgment for the plaintiff against the defendant in the following terms: -

(1) The defendant’s registration as the proprietor of the land parcel NO NDIVISI/MUCHI/XXXX was only as a trustee in favour of the plaintiff and her children.

(2) The trust is hereby determined.

(3) The defendant shall within 30 days of this Judgment execute all the relevant documents to transfer this title NO NDIVISI/MUCHI/XXXX in favour of the plaintiff and her children.

(4) In default of (3) above, the Deputy Registrar of this Court shall execute all the necessary documents to facilitate that transfer and the title held by the defendant shall be cancelled.

(5) No orders as to costs as the suit was not defended.

Boaz N. Olao.

J U D G E

3rd March 2021.

Judgment dated, delivered and signed at BUNGOMA this 3rd day of March 2021 by way of electronic mail in keeping with the COVID – 19 pandemic guidelines.

Right of Appeal explained.

Boaz N. Olao.

J U D G E

3rd March 2021.