



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 298 OF 2002

ALBERT KARIUKI KANAKE.....PLAINTIFF

=VERSUS=

THE ATTORNEY GENERAL.....DEFENDANT

JUDGEMENT

1. The plaintiff has filed this suit against the defendant seeking:-

a. Kshs.5,000,000/-

b. Interest on (a) from 30th January 2001, until payment in full.

c. Costs.

2. Upon being served with summons to enter appearance and copies of plaint the defendant filed a statement of defence.

3. PW1, Albert Kariuki Kanake told the court that he was husband to Rose Muthoni Kariuki who was the registered proprietor of Land Parcel Number Nairobi/block 93/1252 hereinafter referred to as **“the suit property”**. He told the court that he paid the purchase price of Kshs.470,000/-. He told the court that the land was for development of a nursery school to be run by his wife who was a teacher. He produced a letter of allotment as exhibit P1. He told the court that on 24th January 2000 he registered a caution with the Lands Registry Nairobi, this is because he realized his wife had decided to sell the suit property without informing him. Rose Muthoni wrote to the Land Registrar seeking the removal of the caution.

4. The plaintiff told the court that he never got the letter informing him as it went to the wrong address. The caution was then removed and the suit properties sold to Samura Engineering Limited for Kshs.10 Million on 30th January 2001 and a certificate issued. He further told the court that he has suffered loss as a result of the fraudulent sale. He states that he was entitled to half a share of the suit property.

5. In support of his case he produced the letter of allotment to Wonderose Nursery School as exhibit P1, Bankers Cheques and receipts confirming payments as exhibit P4 –P13 respectively, a letter from M/s Janet Odera & Company Advocates to M/s Kosgei & Co. Advocates as exhibit P 14. A caution registered in favour of the plaintiff claiming beneficiary interest as exhibit P15, P16, a letter by Rose Muthoni Kariuki to the Land Registrar seeking that the caution be removed was produced as exhibit P17. A notice to the plaintiff notifying him that the caution would be removed was produced as exhibit P18.

6. The defendant called one witness DW1, Edwin Munoko, a Land Registrar with the Ministry of Lands and Physical Planning, adopted his witness statement by his colleague Eric Mulevu dated 2nd March 2016. He told the court that the registered owner of the suit property Number Block 93/1252 is Rose Muthoni Kariuki. That the plaintiff's name does not appear as the co-owner of the suit property. He further told the court that the plaintiff's name does not appear on any of the documents. Rose Muthoni Kariuki did not state her relationship with the plaintiff. He prays that the suit be dismissed.

7. At the end of the trial, both parties filed written submissions.

8. I have considered the pleadings, the evidence of record, the written submissions of counsel, and the authorities cited. The issues for determination are:-

i. Whether or not the plaintiff was a husband to Rose Muthoni Kariuki.

ii. Whether the suit property was matrimonial property.

iii. Whether the caution lodged by the plaintiff was removed without proper notice and if so whether he is entitled to compensation.

9. I have seen the letter of allotment produced as exhibit P1, the same is allocated as unsurveyed Nursery School plot, along Mombasa road. The acceptance letter to the Commissioner of lands is written and signed by H. W. Gatungu, Rose Muthoni proprietor of Wonderose Nursery School. There is nothing to show that the plaintiff was a co-owner of the said plot. He told the court that he paid the purchase price of KShs.470,000. He has produced several cheques as exhibits. They are bankers cheque. There is nothing to show that he is the one who drew the cheques or were drawn from his account.

10. The plaintiff has also failed to adduce any evidence to show that he and Rose Muthoni Kariuki were husband and wife. There is nothing to prove the suit property was matrimonial property. When cross examined by the defence counsel the plaintiff admitted that he had nothing to show that the suit property was jointly owned by himself and the said Rose Muthoni.

11. There is no doubt that the plaintiff lodged a caution as confirmed by exhibit P 15 and 16. He claimed he was a joint owner of the suit property. By a letter dated 27th November 2000, Rose Muthoni Kariuki applied for the caution to be removed. By a letter dated 27th November 2000 the District Land Registrar wrote to the plaintiff informing him of the intention to remove the caution. The said caution was removed after there was no response from the plaintiff. The letter is sent through his postal address. I find that the said caution was removed after he was duly notified.

12. In summary the plaintiff has failed to prove that he was the husband of Rose Muthoni Kariuki. He has also failed to prove that the suit property was owned jointly by him and the said Rose Muthoni Kariuki. He is therefore not entitled to a half share of the suit property, hence not entitled to any compensation. The caution was removed after proper notice was given. He has suffered no loss.

13. I find that the plaintiff has failed to establish his case on a balance of probabilities as against the defendant. The suit is dismissed with costs to the defendant.

It is so ordered.

Dated, signed and delivered in Nairobi on this 4TH day of JULY 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendant

.....Court Assistant