



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CIVIL CASE NO 38 OF 2014

NICODEMUS NYAGAKA MARANGA.....PLAINTIFF

VERSUS

GRACE GATHONI MWANGI.....1ST DEFENDANT

JAMES KAMAU WACHIRA.....2ND DEFENDANT

LEAH MUTHONI KANUGO.....3RD DEFENDANT

JUDGEMENT

1. The plaintiff has filed this suit against the defendants jointly and severally for:-

- a. A declaration that the sale agreement purportedly signed by the 1st defendant alone disposing Plot No 565 Mikindani is null and void.**
- b. An order canceling the 2nd and 3rd defendants title and any other transfer which might have been done as a result of the illegal ownership of the 2nd and 3rd defendants.**
- c. General damages.**
- d. Any other relief this honourable court may deem fit to grant.**
- e. Cost of this suit at court rates.**
- f. Interests of this suit at court rates.**

2. The Defendants who were duly served with copies of plaint and summons to enter appearance through an advertisement in the standard newspaper on 1st August 2016, neglected to enter appearance and/or file defence written the prescribed period. Interlocutory judgment was entered on 19/3/2015 and the matter proceeded to formal proof.

3. It is the plaintiff's case that he bought the plot jointly with the 1st defendant. It was plot number 565, Mikindani World Bank Scheme. They bought it from Japheth Nzila Mwangi. He produced the sale agreement as exhibit p1. The transfer was effected in their favour. Later they commenced construction on the said plot. The plaintiff produced the documents appearing on the list of documents dated 26th January 2016 and 24th February 2014 as exhibits p1 to P 17 respectively.

4. He said that he was surprised to find out that the 1st defendant transferred the said plot to the 2nd and 3rd defendants. It is his case that he did not participate in the said transaction and that the 1st defendant sold the plot without his consent. He denies that the signature appearing in the sale agreement is his. He prays that the sale be declared null and void.

5. I have considered the evidence on record and the exhibit produced. The plaintiff's case is uncontroverted. The issue for determination is whether the 1st defendant had capacity to transfer the suit property to the 2nd and 3rd defendants?

The plaintiff has denied that the signature on the sale agreement disposing the plot the 2nd and 3rd defendant is his.

I find that it is highly unlikely that the signature is his as he was out of the country at the time. His case has not been controverted.

6. The sale agreement signed by the 1st defendant disposing the property is null and void as the same was done by one party even though the property was owned jointly. I am guided by the case of **Isabel Chelagat vs Samuel Toroitch & 5 Others. Eldoret ELC No 915 of 2012.**

7. All in all I find that the plaintiff has made out a good case against the defendants. I decline to award general damages as the court was not guided on the same. The plaintiff in his written submissions did not address this issue.

8. Accordingly judgment is entered in favour of the plaintiff as against the defendants jointly and severally as follows:-

a. A declaration be and is hereby issued that the sale agreement purportedly signed by the 1st defendant disposing Plot NO 565 Mikindani World Bank Scheme is null and void.

b. An order is hereby issued cancelling the 2nd and 3rd defendants title and any other transfer resulting from the illegal ownership of the 2nd and 3rd defendants

c. Costs of the suit and interest.

Dated and signed in Nairobi on this.....day of2018

.....

L. KOMINGOI

JUDGE

Dated and delivered at Mombasa on this 5th day of October 2018.

.....

JUDGE