



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MURANG'A

ELC NO 295 OF 2017

JASON NJURU MWANGI.....1ST PLAINTIFF

JANE WANJIKU NJUGUNA..... 2ND PLAINTIFF

VERSUS

NYAMBURA MWANGI1ST DEFENDANT

KARIUKI MWANGI.....2ND DEFENDANT

JUDGMENT

1. The Plaintiffs sued the Defendants seeking the following orders;

- a. A declaration that land parcel LOC.12/SUB-LOC.1/2622 is JOINTLY held by the Plaintiffs and Defendants.
- b. A Declaration that the subsequent subdivision of land parcel LOC.12/SUB-LOC.1/2622, transfer and issuance of titles on land parcels numbers LOC.12/SUB-LOC.1/2877, LOC.12/SUB-LOC.1/2878, LOC.12/SUB-LOC.1/2875 and LOC.12/SUB-LOC.1/2876 was unlawful and fraudulent.
- c. An order of cancellation of titles numbers LOC.12/SUB-LOC.1/2877, LOC.12/SUB-LOC.1/2878, LOC.12/SUB-LOC.1/2875 and LOC.12/SUB-LOC.1/2876 and reinstatement of the original title number LOC.12/SUB-LOC.1/2622 and the cancellation be noted in the relevant land registrar.
- d. A permanent injunction restraining the Defendants by themselves, their servants, agent, purchasers or otherwise howsoever be restrained from selling, leasing, transferring, charging or registering any instrument on all that piece of property known as LOC.12/SUB-LOC.1/2622 and all other parcels emanating from the subdivision of original LOC.12/SUB-LOC.1/2622 (the suit property) namely LOC.12/SUB-LOC.1/2877, LOC.12/SUB-LOC.1/2878, LOC.12/SUB-LOC.1/2875 and LOC.12/SUB-LOC.1/2876 and from disposing off, alienating, transferring, registering, constructing on, demolishing or otherwise dealing with the property.
- e. Costs of this suit together with interest thereon at such rate and for such period of time as this Honourable Court may deem fit to order be awarded to the Plaintiffs.
- f. Any such other or further relief as this Honourable Court may deem appropriate to be made.

2. It is the Plaintiffs' case that parcel No LOC.12/SUB-LOC.1/2622 was registered in the names of the Plaintiffs and the Defendants. According to the orders issued on the 15/11/2000 the suit land was to be held jointly and the severally by the Plaintiffs and the Defendants. It is their case that contrary to the said orders the Defendants without their knowledge and consent caused the subdivision of the suit land and registered the resultant titles in the names of the Plaintiffs and the Defendants.

3. That the said subdivision and registration of the titles was illegal and have pleaded particulars of conspiracy and illegality on the part of the Defendants.

4. At the hearing PW1- Jason Njuru Mwangi led evidence and adopted his witness statement dated the 12/5/15 and produced the list of documents marked 1-5. The witness stated that the parties are related being siblings.

5. In his evidence in chief the witness stated that he did not sign the mutation form; did not apply for consent of the Land Control Board; did not approve the sale of 0.2 acres of land to facilitate the payment of family debts and that the land should have remained as a whole and to be held jointly. That he did not attend the meeting at the District officer's office and neither did he write the letter dated the 24/7/12 to the chief.
6. When cross examined he stated that the official searches do not show that the tenure of the title holding was joint proprietorship. However, the Court orders dated the 20/1/2010 in SRMCC No 1 of 1996 stated that the land should be held jointly and severally.
7. PW2 – Jane Wanjiku Njuguna adopted her witness statement dated the 12/5/15 and informed the Court that they did not agree to the partitioning of the suit land. That she did not obtain land control board consent nor sign the mutation forms for subdivision. She was clear that she did not want the land to be sold and that the suit land should be held as joint family land. That she was not aware of the letter addressed to the chief dated 24/7/12.
8. DW1- Kariuki Mwangi testified and produced a list of documents marked as DEX 1-13. He stated that all the parties in the suit agreed to subdivide the suit land so that each would get their individual share. They then proceeded to the local Chief namely Monica Wairimu Muthee who gave them a letter to take to the District to facilitate the issuance of Land Control Board consent. That all of them were present at the meeting. Consent was obtained. The consent fee in the sum of Kshs 4800/- was paid and the receipt was issued in the name of the 1st Plaintiff. That the 1st Plaintiff wrote the letter to the chief and the surveyor visited the land and carried out the subdivision. That they all held a meeting at the District Office and obtained consent to subdivide the land.
9. Further he confirmed that all the parties signed the mutation forms. That it is the 1st Plaintiff that sought the surveyor who subdivided the land. That each of the parties to the suit are holding equal share of the land. He informed the Court that the Plaintiffs are seeking to disinherit them of their rightful share of the family land. That the disagreement arose when the family decided to sell 0.2 acres to repay family debts that had been incurred in the previous suits in respect to the said land disputes. The 0.2 acres was to be contributed by the 1st Plaintiff and the 1st Defendant but the 1st Plaintiff declined leading to this suit.
10. In his testimony the witness further stated that all the parties were taken to the office of the surveyor namely Geometer Surveyors in Murang'a by the 1st Plaintiff.
11. The Plaintiff submitted that the question for determination by the Court is whether the Defendants illegally and fraudulently subdivided the suit land into 4 portions without the consent of the Plaintiffs and contrary to the orders of the Court in SRMCC No 1 of 1996 dated the 15/11/2000.
12. That the orders directed that the suit land be registered in the names of the 4 parties to hold jointly and severally. That by subdividing the land without the consent of the Plaintiffs the Defendants committed an illegality.
13. That the Defendants did not adduce any copy of the application for consent to prove that all the parties executed and applied for consent. The Plaintiffs gave evidence that he did not sign the application nor attend the Land Control Board meeting. That even assuming the consent was issued on the 19/6/2012 it lapsed on the 18/12/2012 after six months as no extension was made or another application was sought at the Land Control Board at Kangema.
14. Further the Plaintiff faulted the transaction on account that the mutation forms dated the 6/11/12 were not signed by the Land Registrar. The Defendants explained that they entrusted the forms with the surveyor but did not call the surveyor to testify.
15. That the process of obtaining subdivision was tainted with illegalities. That PW2 testified that he holds the original title of the suit land which lends credence to the illegality.
16. In respect to the letter said to have been authored by the chief of Muguru area, the Plaintiffs submitted that the name of the said chief was not disclosed neither was the said chief called to testify.
17. The Defendants submitted that the 1st Plaintiff admitted to writing and signing the letter dated the 24/7/2012 to the chief of Muguru confirming that the board had issued the Land Control Board consent and urging all the parties to cooperate with the surveyor in carrying out the subdivision. That he also confirmed signing the mutation forms. That the Plaintiffs have lied that they did not participate in the application of the Land Control Board consent. That it is the 1st Plaintiff that sought for a surveyor namely Geometer Survey Limited as confirmed in his letter dated the 24/7/12. In respect to land control board consent the Defendants contended that the consent does not lapse contrary to the submissions of the Plaintiff. That the mutation form presented to the Court is the one that was signed by all the parties and placed before the Land surveyor for processing at the Lands office. That in any event the official searches were signed by the Land Registrar.
18. In conclusion the Defendants stated that the Plaintiffs have not proved their allegations of illegality.
19. The key question is whether the Defendants partitioned the suit land into 4 portions without the knowledge and consent of the Plaintiffs.
20. It is not in dispute that the Parties are all related as siblings born of one mother.
21. According to the orders of the Court in SRMCC No 1 of 1996 the Court decreed that the title should be held jointly and severally.
22. It is the Plaintiff's case that the Defendants have subdivided the land and caused the issuance of the titles in the 4 names of the Plaintiffs and Defendants without their knowledge and consent.

23. The Defendants contend that indeed the Plaintiffs had knowledge and gave their consent. That the 1st Plaintiff procured a surveyor to subdivide the land and even paid for the fees for the subdivision. Further that they all attended the Land Control Board meeting and obtained the consent which was addressed to all of them. That the land was subdivided into equal shares for each of the 4 parties and that all the parties signed the mutation forms.

24. It is to be noted by the Court that the Plaintiffs did not adduce any evidence of a copy of the title or the green card for the suit land from which the subdivisions resulted. There is therefore no evidence to show whether the title was held jointly or in common. The official searches presented to the Court by the Plaintiffs dated the 20/2/15 states at the proprietorship section that the title is registered in the names of Jason Njuru Mwangi, Jane Wanjiku Njuguna, Nyambura Mwangi and Kariuki Mwangi. There is no disclosure as to whether the title is held jointly or in common. That being the case section 91 of the Land Registration Act defines co-tenancy to mean the ownership of land by two or more persons and includes joint tenancy or tenancy in common.

25. The Act provides further that except as provided in any written law where the instrument of transfer of an interest of land to two or more persons does not specify the nature of their rights there shall be a presumption that they hold the interest as tenants in common in equal shares. Further that the instrument made in favour of two or more persons and the registration giving effect to it shall show whether those persons are joint tenants or tenants in common and the share of each tenant if they are tenants in common.

26. In this case it is evident that the orders stated that the land shall be held by the 4 parties herein severally and jointly. However, there is no evidence that the parties were registered as joint tenants in the instrument of title. In the absence of the instrument of title the same can only be inferred from the official search dated the 20/2/15 adduced by the Plaintiffs. In the absence of the copy of the title or the green card it is not possible for the Court to know that nature of the ownership of the parties herein. However, guided by the provisions of the Act, it can only presume that it was a tenancy in common.

27. That be the case, the Land Registration Act provides if the land is owned in common each tenant shall be entitled to an undivided share in the whole and on death of a tenant the deceased share shall be treated as part of their estate. Tenants in common are prohibited in law from dealing with their undivided share in favour of any person other than another tenant in common, except with the consent of the other tenants in writing which consent shall not be unreasonably withheld.

28. It is not in dispute that the original land parcel LOC.12/SUB-LOC.1/2622 has been partitioned into 4 equal titles held by each party. It is this partition that the Plaintiffs seek to reverse on the ground that they did not give their consent. PW1 gave evidence and stated that they did not apply for the Land Control Board consent, sign the mutation form nor paid the subdivision fees. However in cross examination he contradicted himself by stating that;

“ I wrote to the chief on the 24/7/12 in respect to the land. I signed the mutation form dated the 5/10/12. I have never raised any complaint in respect to the land. I was present at the District Officers meeting held on the 25/12/15 and signed the minutes.”

29. The Court noted that the 1st Plaintiff gave contradicting evidence in chief on cross examination and at reexamination thus affecting the credibility of the evidence. Weighed together the 1st Plaintiff was less than candid with his evidence. The Court found the 2nd Plaintiff an outright fibber and her evidence did not amount to much.

30. The evidence of DW1 stated that the Plaintiffs participated in the subdivision, obtaining land control board consent as well as signing the mutation forms. I have seen that the land control board consent was addressed to all the parties in this suit. The subdivision receipt was made in the name of the 1st Plaintiff. The letter dated the 24/7/12 addressed to the Chief Muguru Location informed the chief that land board consent was given on the 19/6/2012 and that he has found the surveyor to subdivide the land namely Geometer Survey Limited and that he has paid the deposit to commence the survey. In the said letter he urged his kin to cooperate with the surveyor and not to repeat what happened at the Land Board where some of them had the intention of derailing the process. This means that all the parties attended the Land Control Board to obtain the consent alluded to earlier.

31. The 1st Plaintiff's signature on this letter and that on his witness statement, minutes of the District Officer held on the 25/2/15 and the mutation form dated the 5/10/12, to a casual eye, appears similar. Though the Plaintiffs denied signing the mutations, they did not produce evidence to prove their averment which should have been in form of a handwriting expert evidence to support that the signatures on the documents on record are forged. The same applies to the 2nd Plaintiff.

32. It is the finding of the Court that the Plaintiffs were aware, consented and had knowledge of the partitioning of the land and actively participated in the process leading to the registration of the 4 titles. Even if consent was not given the Court finds that withholding the same in the circumstances would have been unreasonable given that the land is being partitioned equally to enable each party hold equal share in their own names.

33. It is the view of the Court that since each party has a title in equal shares, the Plaintiffs have not been prejudiced in any way. Their consent having been given the partition of the land was in accordance with the law and therefore the averment of illegality is not proved.

34. Fraud was not pleaded as no particulars of fraud were adduced and proved.

35. In the end the Plaintiffs failed to substantiate their case and it is dismissed.

36. Parties being related I order that each to meet their costs of the suit.

37. It is so ordered.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 27TH DAY OF FEBRUARY 2020.

J .G. KEMEI

JUDGE

Delivered in open Court in the presence of:

Ndegwa for the 1st & 2nd Plaintiff

1st Defendant – Present in person

2nd Defendant – Present in person. Advocate is absent.

Irene and Njeri, Court Assistants