



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

CASE No. 407 OF 2017

GRACE WANJIRU NG'ANGA.....1ST PLAINTIFF

JENIFFER WARINGA MIARAHO.....2ND PLAINTIFF

JECINTER WANGARE NYOIKE.....3RD PLAINTIFF

VERSUS

ELIAS NGUGI NG'ANG'A.....1ST DEFENDANT

GRACE NDUTA THEURI.....2ND DEFENDANT

RULING

1. This suit was commenced by way of Originating Summons (OS) filed on 9th March 2016 and later amended on 11th July 2017. The OS is brought under **Sections 42 and 57 of the Trustee Act**. The plaintiffs describe themselves as office bearers of Naivasha Uiguano Group, a self-help group registered by Ministry of Labour, Social Security and Services under Certificate No. 3604960. The group was formed in 1975 and comprised 85 women. The group purchased the parcel of land known as **Gilgil/Gilgil Block 1/9565 (Kekopey)** (the suit property). When the title deed was issued it reflected the names of the defendants as registered proprietors as trustees of Naivasha Uiguano Group. The group met and passed a resolution revoking the appointment of the defendants as trustees and instead appointing the plaintiffs as trustees of the group. The land registrar declined to register the change of trustees. Accordingly the plaintiffs sought determination of the following questions in the amended OS:

1. Whether the honourable court should revoke the appointment of the defendants as trustees for the beneficial owners of land parcel number Gilgil/Gilgil Block 1/9565 (Kekopey) registered in the name of the defendants as trustees and Naivasha Uiguano.

2. Whether the honourable court should appoint the plaintiffs, the current office bearers of the group as trustees in place of the defendants.

3. Whether the court should order or direct the Naivasha Land Registrar to register the newly appointed trustees as holders in trust of the group's parcel of land known as land reference No. Gilgil/Gilgil Block 1/9565 (Kekopey) in place of the defendants.

2. When the OS came up for hearing, counsel for the 2nd defendant informed the court that the 1st defendant had passed away. Parties then sought to record a consent to the effect that the appointment of the 2nd defendant as trustee of the beneficial owners of the suit property registered in the names of the defendants as trustees and Naivasha Uiguano Group be revoked, that the plaintiffs be appointed as trustees in place of the 2nd defendant and that the Naivasha Land Registrar to register the plaintiffs as proprietors in trust of Naivasha Uiguano Group. I did not adopt the consent. Instead, I ordered the 2nd defendant to file an affidavit to tender evidence of the 1st defendant's death. I further ordered the plaintiffs to file submissions regarding the effect of death of a trustee. They both duly complied.

3. The 2nd defendant filed an affidavit in which she deposed that the 1st defendant was her husband and that he had passed away on 17th August 2016. She annexed a copy of a certificate of death to that effect. The plaintiffs argued in the submissions that in view of the provisions of **Section 37 of the Trustee Act**, the death of a trustee automatically discharges him from the trust and since in this case there is no trust deed with a provision for appointment of trustees and since the second defendant has resigned as a trustee, the court should grant the orders as sought in the consent. It was further submitted that the court should invoke **Section 42 of the Trustee Act** to allow the consent since the group had exhibited a resolution to appoint the plaintiffs as trustees. The case of **Shaban Salim & 4 Others v Ali Omar & 8 Others [1996] eKLR** was cited to buttress those submissions.

4. I have considered the consent, the affidavits and the submissions. I note from the copy of title deed annexed to the affidavit in support of the OS that the 1st and 2nd defendants were registered as proprietors of the suit property as trustees of Naivasha Uiguano Group on 3rd July 2009. I further note that in a resolution dated 14th July 2015, it was agreed that the 1st and 2nd defendants be removed as trustees and in their place the plaintiffs herein Grace Wanjiru Nganga ID No. 3643650, Jeniffer Warenga Miaraho ID No. 1338222 and Jecinter Wangari Nyoike ID No. 4691361 be appointed. In view of the affidavit filed by the 2nd defendant and the copy of the certificate of death annexed to it, I am persuaded that the 1st defendant passed away on 17th August 2016 and that the suit against him abated on 17th August 2017.

5. **Section 42** of the **Trustee Act** provides:

Power of court to appoint new trustees

(1) The court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable to do so without the assistance of the court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

(2) In particular and without prejudice to the generality of the foregoing provision, the court may make an order appointing a new trustee in substitution for a trustee who is convicted of felony, or is a lunatic or a defective, or is a bankrupt, or is a corporation which is in liquidation or has been dissolved.

(3) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(4) Nothing in this section gives power to appoint an executor or administrator.

6. In view of the consent which the parties herein including the 2nd defendant had proposed, it is apparent that the 2nd defendant does not object to her removal as trustee. Further in view of the death of the 1st defendant and since there is no trust deed herein with a provision for appointment of trustees, it is expedient as contemplated by **Section 42 (1)** of the **Trustee Act** that the court intervenes and appoints new trustees as proposed.

7. In view of the foregoing discourse, I am persuaded that the consent should be adopted but with slight modification. I therefore make the following orders:

a) The appointment of the defendants as trustee of the beneficial owners of the parcel of land known as Gilgil/Gilgil Block 1/9565 (Kekopey) registered in the names of the defendants as trustees of Naivasha Uiguano Group be and is hereby revoked.

b) Grace Wanjiru Nganga ID No. 3643650, Jeniffer Warenga Miaraho ID No. 1338222 and Jecinter Wangari Nyoike ID No. 4691361 be and are hereby appointed as trustees in place of the defendants.

c) The Naivasha Land Registrar to register Grace Wanjiru Nganga ID No. 3643650, Jeniffer Warenga Miaraho ID No. 1338222 and Jecinter Wangari Nyoike ID No. 4691361 as proprietors of the parcel of land known as Gilgil/Gilgil Block 1/9565 (Kekopey) as trustees of Naivasha Uiguano Group.

d) The Originating Summons herein is marked settled in the above terms.

e) Each party to bear own costs.

Dated, signed and delivered in open court at Nakuru this 3rd day of March 2020.

D. O. OHUNGO

JUDGE

In the presence of:

Ms Wanuma holding brief for Mr Mwaura for plaintiffs

Ms Wangari holding brief for Mr F N Mungai for the defendants

Court Assistants: Beatrice & Lotkomoi