



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 1411 OF 2013

TABITHA MUTHONI MWANGI.....PLAINTIFF

VERSUS

LEAH WANJIRU NJUGUNA.....1ST DEFENDANT

JUDGEMENT

1. By a plaint dated 19th November 2013 and filed on 20th November 2013 the plaintiff seeks judgement against the defendant for:-

1. A declaration that the plaintiff is the lawful owner of plot no. 760 Kamae Phase 2 Kamae settlement project.

2. An order do issue evicting the defendant from Plot No 760 Kamae Phase 2, Kamae Resettlement Project

3. Costs of this suit be paid by the defendant.

2. Upon being served with the copies of plaint and summons to enter appearance the defendant entered appearance on 11th December 2013 and filed a defence dated 9th December 2013.

3. Pw1, Tabitha Muthoni Mwangi the plaintiff, told the court that she was relying on the witness statement dated 19th November 2013. She also relied on the list of documents dated 19th November 2013. She told the court that on 30th October 2010 she purchased plot no. 760 Kamae Phase 2 from John Irungu Chege. That since her husband paid the purchase on her behalf his name was given as the purchaser while she signed as a witness. The plot was then registered in their joint names and an ownership certificate was issued with a new ownership certificate.

4. In June 2011, she and her husband Richard Migwi Kamau disagreed and they started living separately. Her husband developed the plot using funds they had accumulated together. He constructed 13 rooms, lived in two (2) rooms and rented out 11 rooms. That her husband used to maintain her and the children using the income from the said rental rooms. Her husband died on 30th August 2013. Before he died he had started cohabiting with the defendant in the two rooms. Upon his death she asked the defendant to vacate but she refused and began collecting rent from the said rooms. She prays that the defendant be evicted from the premises.

5. In support of her case the plaintiff produced a sale agreement for plot no. 760 Kamae phase 2. It shows that Richard Migwi Kamau as the purchaser and John Irungu Chege as the seller. The plaintiff Tabitha Muthoni Mwangi has signed as a witness. It was produced as exhibit P1. She has produced ownership certificates in the names of Richard Migwi Kamau and Tabitha Muthoni Mwangi as exhibit P2 and another ownership certificate in the name of Tabitha Muthoni Mwangi as exhibit P3. The two ownership certificates are in respect of Plot 760 Kamae Phase two.

6. DW1 Leah Wanjiru Njuguna, the defendant, also relied on her witness statement. She told the court that the suit plot belongs to her late husband Richard Migwi Kamau. She told the court she got married to Richard Migwi in September 2011. That they started construction on the plot in 2011 and in 2012 and 2013 they lived together. She told the court that they occupied two rooms and collected rent from the other rooms. She still resides on the said plot. She further told the court that the deceased Richard Migwi had lost his documents and reported the matter to the police and obtained a police abstract. She also told the court that the deceased never transferred the plot to the plaintiff.

7. In support of her case the defendant (DW1) relied on the copy of police abstract obtained by Richard Migwi on the alleged loss of the documents, an affidavit by the said Richard Migwi confirming that he was now living with the defendant. She also produced a letter allegedly confirming that she was the wife of the said Richard Migwi Kamau. The said letter is dated 18th May 2019. It is not clear who the author is but it is signed by two out of eight people listed. The said people were not called to testify to confirm the contents of the said letter. The same has not been tested. In any case it does not say much about how the plot was acquired. As to the alleged loss of documents by Richard Migwi, the plaintiff has given an explanation that the documents could not have been lost as she had them.

8. I have considered the pleadings and the evidence on record the issue for determination are:-

(i) Whether the plaintiff is the lawful owner of the plot no. 760 Kamae Phase 2 within Kamae Resettlement Project.

(ii) Whether the defendant is illegally collecting rent from the said plot. Should she account for the rent she collected?

(iii) Is the plaintiff entitled to the orders sought?

(iv) Who should bear costs?

9. The plaintiff has produced an ownership certificate on her name. She has given a history of how the plot was acquired. I believe her story. An ownership certificate was first issued in the joint names of the plaintiff and Richard Migwi Kamau and later on her sole name. The defendant was not able to shake the plaintiff's case.

10. DW1 only claims to have lived with the said Richard Migwi Kamau in the two rooms at the said plot from 2012. She has not convinced the court that she was married to the said Richard Migwi Kamau. She has failed to demonstrate that she is entitled to be in the said plot. She therefore has no right to collect rent from the said rooms and should account for the same.

11. All in all, I find that the plaintiff has proved her case against the defendant on a balance of probabilities. I enter judgment in her favour as follows:-

(a) That a declaration is hereby issued that the plaintiff is the lawful owner of plot no. 760 Kamau phase two (2) Kamae Resettlement Project.

(b) That an order is hereby issued directing the defendant to vacate plot no. 760 Kamae Phase two (2) Kamae Resettlement Project forthwith. The defendant should also account for the rents so far collected.

(c) That costs of this suit be born by the defendant.

It is so ordered.

Dated, signed and delivered in Nairobi on this 21ST day of MAY 2020.

.....

L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiff

Ms Netia for the Defendant

Kajuju-Court Assistant