

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL SUIT NO. 72 OF 2014 (OS)

PHILIS WAMBUI MARA.....PLAINTIFF

VERSUS

PETER NJOGU MWANGI.....DEFENDANT

JUDGMENT

1. The Originating Summons dated 15th November 2014 seeks determination of questions relating to the interest of the plaintiff in a property known as Plot No. 0198 (now No. 208).
2. The plaintiff claims to have had married the defendant sometime in 2005 at a church ceremony. They have four children between them. She alleges that during matrimony the parties acquired certain assets, including that described in paragraph 1 above. They allegedly spent over Kshs. 3,000,000.00 on developing the parcel of land. She was subsequently evicted from the property, made reports to the police and reconciliation has failed. She accuses the defendant of disposing of other matrimonial assets and of living with other women on the matrimonial home after ejecting her therefrom.
3. The defendant filed a defence. He disputes being the father of the children of the plaintiff and being the owner of the alleged plot, denies that the parties had developed the plot and ejecting the plaintiff from the alleged plot, among others.
4. He also swore an affidavit on 4th March 2016. He concedes to the parties having cohabited from 1988 to 1990, and then separated. They got together again and solemnized marriage in 2005 and then went separate ways again in 2011. He states that the property that he owns is Plot No. 209, but not Plot No. 208, which he alleges he bought after the parties had separated and before they got married in church in 2005. He states that he sold the property in 2014.
5. The matter was disposed of orally. Both parties testified and breathed life to the averments made in their respective pleadings and affidavits. They also called witnesses to support their respective positions.
6. The suit is about division of matrimonial property. There are two principal matters to be proved in a case of this nature. It must be established that the parties were in a marriage and that they had acquired property during their marriage. There is no dispute that the parties were man and wife at some point. What remains to be determined is whether they had acquired the subject property during matrimony, which the court should then determine whether the plaintiff is entitled to any interest in it.
7. Of primary interest to the court is whether the property in question exists. To prove its existence, the parties called one Ben Munywoki Musyoka. He claimed to be the Secretary of the Mwengeny Settlement Scheme Self Help Group. He came with records to show that Plot No. 208 did not belong to the defendant, but that the defendant was registered as owner of Plot No. 209. Even with that information the plaintiff insisted that she was ready to proceed with the case as pleaded, that the defendant actually owned Plot No. 208.
8. There is no clarity as to the type of registration of the subject property. Mwengeny Settlement Scheme Self-Help Group appears to be an amorphous grouping. Its registration credentials were not produced.

Crucially, it was not indicated whether the property in question has government registration, or whether the same is a scheme of squatters sitting on government land. It was not established that the defendant had a concrete title to the property in question to warrant the court making orders on it.

9. I am not satisfied that a proper case has been made out for grant of the orders sought in the suit. I shall accordingly dismiss the said suit, but there shall be no orders as to costs.

DATED and SIGNED at NAIROBI this 3RD DAY OF MAY, 2017.

W. MUSYOKA

JUDGE

DELIVERED and SIGNED this 5TH DAY OF MAY, 2017.

M. MUIGAI

JUDGE