



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
ELC CASE NO. 165 OF 2013

W.G.PLAINTIFF

(Suing as legal representative of Estate of K. N. (Deceased))

VERSUS

P. N. G.DEFENDANT

JUDGMENT

By her plaint filed herein on 26/9/2011, the plaintiff suing as the legal representative of one K. N. (deceased) filed this suit against the defendant seeking the following remedies:-

- a. ***A declaration that L.R. No. NGANDORI/NGOVIO/1297 is part of the Estate of K. N. and should therefore devolve to the plaintiff herein and also an order directing the Land Registrar Embu to cancel the transfer of L.R. No. NGANDORI/NGOVIO/1297 to the defendant and effect a registration in favour of the plaintiff.***
- b. ***Costs and interest***
- c. ***Any other relief this Court may deem fit.***

The claim was based on the pleadings that the plaintiff was wife to the deceased K. N. who was the registered owner of land parcel No. NGANDORI/NGOVIO/1297 (hereinafter referred to as the suit land) and therefore part of the deceased's Estate and that the defendant, without the knowledge of the deceased and plaintiff, had the said suit land transferred fraudulently into his (defendant's) names.

The particulars of fraud pleaded include dealing with the deceased's Estate without confirmed letters of administration.

The defendant filed a defence in which he stated that the plaintiff is infact the wife of one G. N. and not K. N. who was the registered owner of the suit property. He added further that he obtained the said land legally and has been in occupation of the same and that this suit is an abuse of the Court process.

Although served to attend Court for the pre-trial on 14/5/2013 and for the hearing on 5/6/2013, the defendant did not attend on any of those dates. The Court therefore confirmed the issues framed by the plaintiff and proceeded to hear the case in the absence of the defendant as no explanation was given for his absence.

I had considerable difficulties following the plaintiff's case as she is quite elderly. When I asked for her Identity Card (Exhibit 4), it indicated her date of birth as 1930 and so her age is 83 years. Even her witnesses were quite elderly and it took quite a while to follow their testimony. Nonetheless, it is the responsibility of the Court to try and gather and also understand all the evidence adduced by witnesses no matter how difficult that exercise may turn out to be.

Having heard the plaintiff and her two witnesses namely C. R. (PW2) and S. K. (PW3), what comes out clearly from their testimonies is that infact the plaintiff is not the wife of the late K. N. (deceased) in whose names the suit land was registered. She and PW2 were infact co-wives of one G. who was a brother to the deceased K. N. . However, the said K. N. had no wife or children so it would seem he took up plaintiff and PW2 as his wives and gave them the suit land on which they were living. The plaintiff and PW2 took out a grant of letters of administration in Succession Cause No. 128 of 2011 at Embu High Court in respect to the Estate of the deceased K. N. The plaintiff also produced the Green Card (Exhibit 2) and Official search (Exhibit 3) in respect of the suit land showing that it was registered in the names of the said K. N. in 1960 but on 20/11/1997, the same was transferred into the defendant's names. When asked by the Court why this suit was not filed earlier following the transfer, it turned out that the said K. N. was of un-sound mind and that the defendant took advantage of that to register himself fraudulently as the owner of the suit land. It was also the plaintiff's case that the defendant has taken away all the documents relating to the suit land and that although the records show that the transfer was done in 1997, this was only discovered later after the demise of K. N..

All the above testimony was un-controverted because the defendant, though served, did not attend the trial. The fact that the plaintiff and PW2 who were residing on the suit land together with the deceased were not aware about the transfer of the land into defendant's names, and that the transfer documents and the title deed itself are missing, may be evidence of the fraud surrounding the said transfer. Although the plaintiff and PW2 were not infact married to the deceased K. N., it would appear that the three had a husband and wives relationship and therefore in terms of priority, they ranked higher than the defendant who is a son to the plaintiff. That would explain how they managed to obtain a grant in respect of the Estate of the said K. N.

Having considered the plaintiff's case, un-controverted as it is, and believing them as I do, I have no hesitation in finding that on a balance of probability the plaintiff has established her case against the defendant and is deserving of the orders sought in her plaint.

I therefore enter judgment for the plaintiff as prayed in her plaint.

Orders accordingly.

B.N. OLAO

JUDGE

5/6/2013

Judgment delivered in open Court this 5th day of June 2013 soon after the hearing.

Right of appeal explained.

B.N. OLAO

JUDGE

5/6/2013