



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 76 OF 2019 (OS)

GLADYS NJERI KIMANI.....1 ST PLAINTIFF

MONICA NDUTA KIMANI.....2 ND PLAINTIFF

(Suing as the Administrators of the Estate of BENSON KIMANI WANDERI - Deceased)

VERSUS

GLADYS NJOKI NGUGI.....DEFENDANT

JUDGMENT

1. The dispute in this suit relates to conveyance of six parcels of land partitioned out of **Land Parcel Number Dagoretti/Mutuini/487** (hereinafter referred to as "**Parcel Number 487**"). Parcel Number 487 measured approximately 5 acres. There is common ground that the said parcel was at all material times registered in the names of **Gladys Njoki Ngugi (the defendant)** and **Benson Kimani Wanderi** (whose estate is represented by the plaintiffs herein). In early 1990s, the two proprietors commenced a partition exercise pursuant to which the following six parcels were created out of Parcel Number 487: (i) Dagoretti/Mutuini/859 measuring approximately 0.101 hectares; (ii) Dagoretti/Mutuini/860 measuring approximately 0.101 hectares; (iii) Dagoretti/Mutuini/861 measuring approximately 0.101 hectares; (iv) Dagoretti/Mutuini/862 measuring approximately 0.101 hectares; (v) Dagoretti/Mutuini/863 measuring approximately 0.810 hectares; and (vi) Dagoretti/Mutuini/864 measuring approximately 0.665 hectares (hereinafter referred to as **Parcel Numbers 859, 860, 861, 862, 863 and 864 respectively**). The two proprietors mutually agreed that upon completion of the partition exercise, Parcel Numbers 859, 860, 861, 862 and 864, together measuring approximately 1.069 hectares, would be conveyed to and registered in the name of **Gladys Njoki Ngugi (the defendant)** as the sole proprietor thereof, and Parcel Number 863, measuring approximately 0.810 hectares, would be conveyed and registered in the name of **Benson Kimani Wanderi** as the sole proprietor thereof.

2. Due to what both parties to this suit describe as "mutual oversight/mistake", consent to transfer the six partitions from the joint names of the two proprietors to their individual names was not obtained and the intended conveyance was not completed. Consequently, the parcel registers for each of the six partitions still bears the names of the two proprietors to date. On the ground, Parcel Number 863 is in possession of the Estate of Benson Kimani Wanderi while all the other five parcels are in the possession of the defendant.

3. Benson Kimani Wanderi (**the deceased**) died on 4/12/2004. The two plaintiffs are administrators of his estate. They initiated this suit through an Originating Summons dated 28/2/2019. They contended that the defendant had refused to part with the original title deed for Parcel Number 863 yet the said title deed was required for the purpose of processing of transfer of Parcel Number 863 into the name of the beneficiary of the estate of the deceased. Consequently, they sought the following verbatim orders against the defendant:

1) A declaration do issue that the defendant's registration as co-owner of the property in LR No Dagoretti /Mutuini/863 is deemed to be in trust for the benefit and in favour of one, Benson Kimani (late) the registered co-proprietor.

2) An order that the defendant to avail to the plaintiffs the following documents, and any others, and to attend the relevant the Land Control Board meeting(s) to ensure a transfer and/or transmission of exclusive ownership of LR No Dagoretti/ Mutuini/863 to the plaintiffs, that is to say;-

i. Application for Land Control Board Consent to Transfer, duly signed and witnessed.

ii. Form RL 1 (Transfer of undivided half share), duly signed and witnessed.

iii. The original Title Deed for LR No Dagoretti/Mutuini/863.

iv. Three (3) colour passport-size photographs of herself.

v. Copy of her National Identification Card.

vi. Copy of her KRA PIN Certificate.

vii. Marriage Certificate if any or the equivalent.

viii. Affidavit of spousal consent to transfer, or the equivalent, as the case may be.

ix. Doing such other acts and availing such further documents as may be required of her in order to achieve the transfer and transmission

3. In the event of failure and/or refusal by the defendant and/or her agents or representatives to comply with (2) above or any part thereof within thirty (30) days and without prejudice to any other remedy available to the plaintiffs, the Deputy Registrar of this Honourable Court be authorized to do all such things and execute all such documents for and on behalf and in place of the defendant and/or or her agents and representatives as will ensure a transfer and registration of exclusive ownership of LR No Dagoretti/Mutuini/863 to the 1st plaintiff.

4) Any other / further relief do issue as this Honourable Court may deem fit to grant in the circumstances.

5) The defendant to bear the costs of this suit and interest thereon to be paid to the plaintiffs. order that the plaintiff be registered as proprietor of Land Parcel No LR 1330/542 in place of the 2nd, 3rd and 4th defendants who are now the registered proprietors.

6) An order directing the defendants to execute transfer of the said Land Parcel No LR 13330/542.

7) Alternative to prayer 1 and 2 above, a declaration that the respondents hold Land Parcel No LR 13330/542 in trust for and behalf of the plaintiff.

8) An order for costs of and incidental to this suit.

9) Such other further relief as the nature of the case may require or this honorable court may deem fit to grant.

4. In response to the originating summons, the defendant filed a replying affidavit sworn on 11/4/2019. She admitted paragraphs 3, 4, 5, 6, 7 and 8 of the identical affidavits filed by the plaintiffs in support of the originating summons. She denied causing any unnecessary delay in having Parcel Number 863 transferred to the estate of Benson Kimani Wanderi. She added that she had been to the Lands Office and the Land Registrar had asked her to avail the death certificate and succession documents relating to Benson Kimani Wanderi. Her case was that the plaintiffs had declined to avail the said documents to facilitate "rectification" of all the parcel registers relating to the six partitions. She was emphatic that she had no interest in Parcel Number 863. She added that she wanted all the six parcel registers "rectified" together and this would be possible only if the plaintiffs were will to present themselves to the Land Registrar and avail all the necessary documents.

5. The originating summons was canvassed through written submissions which I have duly considered. I have also considered the defendant's written summons.

6. There are no major contested facts in this originating summons. The defendant does not lay any claim to Parcel Number 863 which is one of the six partitions created out of Parcel Number 487. Similarly, the estate of Benson Kimani Wanderi does not lay any claim to any of the other five parcels created out of Parcel Number 487. Looking at the affidavits before court, what is disclosed in the affidavits is mutual suspicion and lack of co-operation on an issue which requires co-operation by both the defendant and the administrators of the estate of Benson Kimani Wanderi. In the circumstances, the single question falling for determination in this originating summons relates to the appropriate orders which should ensue in this originating summons.

7. All the six partitions created out of Parcel Number 487 are still registered in the joint names of **Gladys Njoki Ngugi** and **Benson Kimani Wanderi**. Secondly, it is the common position of the parties to this suit that Parcel Number 863 should be registered in the name of the beneficiary of the estate of Benson Kimani Wanderi, while Parcel Numbers 859, 860, 861, 862 and 864 should be registered in the names of Gladys Njoki Ngugi. In my view, therefore, the appropriate disposal orders to ensue in this originating summons should be one that covers all the six partitions created out of Parcel Number 487 as opposed to granting disposal orders relating to Parcel Number 863 alone.

8. Consequently, the court issues the following disposal orders in the originating summons dated 28/2/2019.

a) The defendant and the administrators of the estate of Benson Kimani Wanderi shall jointly avail, procure, and execute all necessary documents, and convey Land Parcel Number Dagoretti/Mutuini/863 to the Administrators of the estate of Benson Kimani Wanderi as sole proprietor and the Administrators of the said estate shall thereafter be at liberty to convey it to the beneficiary thereof.

b) Simultaneous with (a) above, the defendant and the Administrators of the estate of Benson Kimani Wanderi shall avail, procure, and execute all necessary documents, and convey Land Parcel Numbers Dagoretti/Mutuini/859; 860; 861; 862; and 864 to Gladys Njoki Ngugi as sole proprietor thereof.

c) The estate of Benson Kimani Wanderi shall bear the attendant costs relating to conveyance of Parcel Number Dagoretti/Mutuini/863 while the defendant shall bear the attendant costs of conveyance relating to the other five titles created out of Parcel Number 487.

d) The Administrators of the estate of Benson Kimani Wanderi and the defendant shall mutually co-operate to ensure prompt implementation of the above orders.

e) The two parties to this suit shall bear their respective costs of the originating summons.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 10TH DAY OF NOVEMBER 2020.

B M EBOSO

JUDGE

In the Presence of: -

Ms Kipruto for the Plaintiff

Mr Joseph Ngugi, son to the Defendant

Court Clerk - June Nafula