



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MILIMANI LAW COURTS
ELC SUIT NO. 1340 OF 2014
IN THE MATTER OF LAND KNOWN AS LR 8226/159

ESTHER WANJIKU GITAGIA.....PLAINTIFF

VERSUS

MWICHOKANIRIA WOMEN GROUP (*Sued through their officials*)

LEAH WAMBUI KARIITHI (Chairlady) & 5 OTHERS.....DEFENDANTS

JUDGEMENT

1. The Plaintiff filed an originating summons against the defendants in which she sought the following reliefs:-

1. That the Court to compel the officials of Mwichokaniria Women Group i.e 1st, 2nd and 3rd Respondents, to surrender the original title LR No.8226/21 and in case they fail to do so, or in case it is lost, the Chief Land Registrar to issue a provisional certificate of title in lieu of the original title.

2. That the Honourable Court do compel the 1st, 2nd 3rd and 4th defendants to sign transfer form, failure to which the Deputy Registrar to sign on their behalf.

3. That the court to compel the 1st, 2nd 3rd and 4th respondents to apply for consent from the commissioner of lands and change of user, failure to which the Deputy Registrar to do so on their behalf.

4. That the Chief lands Registrar be directed to issue title in respect to LR No.8226/159 as per the deed plan.

5. That the applicant be given leave to enjoin the government in the suit herein, notwithstanding the fact that 30 days' notice has not elapsed.

2. The first to third defendants are officials of Mwichokanira Women Group who owned LR No. 8226/21. The fourth defendant was a shareholder of the group by virtue of which he was allocated plot No. 8226/159 (suit property) upon subdivision of the main title. Before the fourth defendant could have the suit property registered in his name, he sold it to the applicant. The first to third defendant have since failed to transfer the suit property to the plaintiff.

3. The defendants who were duly served with the originating summons neither entered appearance nor filed any replying affidavit. Directions were given Lady Justice Gacheru that the plaintiff's Advocates do file written submissions. The directions were duly complied with. When the plaintiffs' counsel appeared before me on 8th November 2018, the counsel applied for withdrawal of the submissions which had been filed so that he could file fresh submissions. The counsel's request was granted and he was directed to file fresh submission in the course of the day. As at the time of writing this judgement, no submissions had been filed as directed and if any were filed, then the same are not in the file. However that notwithstanding ,I will go ahead with the judgement.

4. I have gone through the originating summons as well as the annexures to the same. There is an agreement entered on 19th October 2006 between the plaintiff and the fourth defendant in which the fourth defendant sold the suit property to the plaintiff at a consideration of KShs.500,000/= . The suit property was by then comprised in an interest identified as ballot No.29 which upon subdivision became the suit property. The first to third defendants have no reason not to transfer the suit property to the plaintiff. I find that the plaintiff has proved her claim on a balance of probabilities. I grant the following reliefs:-

1. The first to third defendants as officials of Mwichokaniria Women Group or any other new officials of the Group are hereby compelled to surrender the original title LR No.8226/21 to the Chief Land Registrar or if the same is not available the Chief Land Registrar to dispense with the original for purposes of transfer of LR No.8226/159 to the plaintiff.

2. The first to fourth defendants do sign transfer forms in favour of the plaintiff failing which the Deputy Registrar of this court do sign the same on their behalf.

3. The Chief Land Registrar do issue title in favour of the plaintiff as per the deed plan in respect of LR No.8226/159.

4. Costs of this suit to be paid to the plaintiff by the first to third defendants.

Dated, Signed and delivered at **Nairobi** on this **17th** day of **January 2019**.

E.O.OBAGA

JUDGE

In the absence of plaintiff's advocate who was aware of the date and time of delivery of Judgement.

Court Assistant: Hilda

E.O.OBAGA

JUDGE