



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CASE NO 208 OF 2011**

**JERUSHA NNJAMBI KARUNGU.....PLAINTIFF**

**VERSUS**

**ANDREW MARTIN KARUNGU CHEGE.....DEFENDANT**

**JUDGEMENT**

1. This dispute is between a mother and her son. The Plaintiff filed the plaint dated 11/5/2011 on 12/5/2011 claiming that she is the legal owner of **Nairobi/ Block 140/86/26** ("the Suit Property") at Nyayo Embakasi which she claims to have acquired on or about 1999 and 2000, from the National Social Security Fund (NSSF) through her son, the Defendant who she claims bought it on her behalf. The Plaintiff contended that the Defendant executed the sale agreement with NSSF, and that it was understood that he was signing it in trust for the Plaintiff.

2. The Plaintiff claims that she paid the full purchase price through funds she remitted to the Defendant while she lived and worked in the United Kingdom (UK). The Plaintiff contends that upon her return to Kenya the Defendant failed to sign transfer documents in her favour thus making it difficult for her to obtain a title document over the Suit Property.

3. The Plaintiff contended that the Defendant's actions amounted to fraud. She seeks an order of permanent injunction to restrain the Defendant by himself or his agents from interfering with her ownership of the Suit Property. She also seeks a declaration that the Defendant purchased the Suit Property and signed the sale agreement in trust for her; an order for specific performance directed to the Defendant to sign the transfer documents in respect of the Suit Property; and an order directing the Deputy Registrar to sign transfer documents if the Defendant fails to execute the transfer documents. She also seeks damages for breach of contract and costs of the suit.

4. The Defendant denied the allegations in the plaint, through his statement of defence dated 14<sup>th</sup> June 2011 and filed on 16<sup>th</sup> June 2011. He contended that he is the legal, rightful and registered owner of the Suit Property, which he alleged was purchased for his benefit as an absolute gift with the intention of the Defendant acquiring proprietary rights of ownership exclusive of the Plaintiff. He contended that at no time did the parties in the suit intend for nor declare a trust in favour of the Plaintiff in the purchase of the Suit Property. He also averred that the Plaintiff had full knowledge that the transfer documents to the Suit Property would be registered in favour of the Defendant and that he would have acquired proprietary rights over the Suit Property and that no request, demand or right of ownership would be claimed by the Plaintiff against the Defendant at the time of purchase or otherwise.

5. The Plaintiff testified that she sent money to the Defendant from the UK for him to purchase the Suit Property on her behalf. The purchase price was Kshs. 2.25 Million. She produced a copy of the tenant purchase agreement between NSSF and the Defendant dated 28/2/2000. The agreement stated that the purchase price would be paid through monthly instalments of Kshs. 28, 342/= over a period of 180 months. She produced statements of account from NSSF including payments of Kshs. 225,000/= made on 22/10/1999, Kshs. 500,000/= made on 28/4/2000, Kshs. 1,437,211/= paid on 1/9/2000. She also produced a copy of the bankers cheque for Kshs. 500,000/= dated 28/4/2000 issued to NSSF. She also produced copies of the Defendant's bank statements showing sums of Kshs. 100,000/=, Kshs. 742,000/= and Kshs. 500,000/= transferred into his account on 3/8/2000, 16/8/2000 and 31/8/2000 respectively. She also produced a letter from Koel Enterprises to show that she got the Defendant a job with this entity. She stated that she paid the full purchase price for the Suit Property including interest and service charge and produced copies of the letters her lawyers wrote to NSSF and the Defendant requesting him to transfer the Suit Property to her.

6. The Plaintiff's testimony was corroborated by her other son, Stephen T. Karungu whom she called as a witness. She stated that she bought houses in both her sons names on the understanding that they would transfer the houses to her when she came back to Kenya. It is only her second son who agreed to transfer the house bought in his name to his mother when she came back in 2011. She sold that house.

7. The Defendant denied in his evidence that he received instructions from his mother to purchase the house or that he was purchasing the land to hold in trust for the Plaintiff. He claimed that he purchased the Suit Property from his own funds and funds he got from his mother as a gift. He claimed his mother also gifted his brother funds which he used to purchase L.R. No. 140/111/74. The Defendant testified that he raised about 50% of the purchase price for the Suit Property, while the Defendant raised about 50%. He claimed he used to work for Kenya Tea Development Authority and produced a pay slip for April 2006. The Suit Property was purchased in 1999 and 2000.

8. I have considered the pleadings, the oral evidence and the submissions filled by the parties in support of their propositions.

9. I find that DW1's evidence regarding how he raised 50% of the purchase price was shaky. He was not forthright with his answer regarding how he raised the alleged 50%. This leads me to the conclusion that the Defendant did not contribute to the purchase of the suit property at all. I find that the Plaintiff has demonstrated that the suit property was purchased by resources provided by her.

10. During cross-examination, the Defendant conceded that he received money from the Plaintiff but maintained that whatever money his mother gave him was a gift. It is not disputed that the sale agreement in respect of the suit property, dated 28<sup>th</sup> February 2000 is signed by the Defendant. However, the Plaintiff's evidence, which I'm inclined to agree with, pointed to a trust. The Defendant signed the agreement in trust for the Plaintiff. A trust can, and will be implied in order to give effect to the intention of the parties. (**Mbothu & 8 Others v Watimu & 11 others (1966) KLR 171.**)

11. The Plaintiff is the Defendant's mother, he trusted his son would transfer the suit property to him in the appropriate time, but the Defendant had other intentions. After considering the evidence of the Plaintiff and that of her other son, the court finds that the Plaintiff's intention was for the Defendant to purchase the Suit Property on her behalf and hold it in trust for her. It was not a gift.

12. The court allows the Plaintiff's claim in the plaint dated 11/5/2011 in the following terms:

a) A declaration is issued that the Defendant purchased the suit property and signed the sale agreement in trust for the Plaintiff.

b) The Defendant is directed to transfer the suit land, being **Nairobi/Block 140/86/26 Nyayo** Embakasi to Jerusha Njambi Karungu within 30 days of the date of this judgement failing which the Deputy Registrar of the Environment and Land Court will execute the transfer documents in favour of the Plaintiff.

d) An order of permanent injunction is issued barring the Defendant from occupying, utilising, or in any other way dealing with **Nairobi/Block 140/86/26 Nyayo** Embakasi

14. The Defendant will bear the costs of this suit.

**Dated and delivered at Nairobi this 25<sup>th</sup> day of February 2019.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Ms. B. Mutuku holding brief for Mr. Juma for the Plaintiff

Mr. D. Okatch holding brief for Mr. Nyaburi for the Defendant

Mr. V. Owuor- Court Assistant