



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.101B OF 2018

THE PRESBYTERIAN FOUNDATION.....PLAINTIFF

VERSUS

JULIANA SIGE NGERECHI (sued in her capacity as well as the legal

representative of the estate of) **CHEBOCHOK ARAP NGERECHI.....DEFENDANT**

JUDGMENT

(Suit for specific performance; defendant having sold suit properties to the plaintiff; no defence filed, suit allowed).

1. This suit was commenced through a plaint which was filed on 1 March 2018. In the suit, the plaintiff averred that it is the trustee of all property owned by various Presbyterian Churches of East Africa (PCEA) and in this particular case, it holds in trust property belonging to PCEA Nakuru West Parish, Upendo Church. It is pleaded that through a sale agreement dated 21 April 2008, the PCEA Nakuru West Parish, Upendo Church, purchased the land parcel Nakuru Municipality Block 24/76 and Nakuru Municipality Block 24/77 (the suit properties) from one Chebochok Arap Ngerechi (now deceased). Earlier on 2 July 2007, the said parish had purchased from the same Chebochok arap Ngerechi, the land parcels Nakuru Municipality Block 24/74 and Nakuru Municipality Block 24/75. It is averred that the church took possession of all these properties and developed the same. The defendant in this suit is the administrator and legal representative of Chebochok arap Ngerechi. It is pleaded that when the defendant conducted the succession cause of the late Ngerechi, she obtained a confirmed grant, which showed that the suit properties, plots No. 76 and 77, had been distributed to her and she failed to disclose that the late Ngerechi had already sold the said properties to the church. Only the plots Nos. 74 and 75 were noted in the confirmed grant as belonging to the church. In this suit, the plaintiff wishes to have a declaration that it is the owner of the two suit properties and a mandatory injunction to compel the defendant to transfer the suit properties to itself or in the alternative for the Deputy Registrar to execute the requisite documents.

2. The defendant could not be traced and was served through an advertisement in the Standard Newspaper of 22 May 2018. She did not enter appearance nor file anything in this suit.

3. The evidence of the plaintiff's witness, one Humphrey Mbabu Burini, more or less reflected what has been averred in the plaint. He is a church elder in the said Upendo parish and also the Church Registrar. He testified that they purchased the plots No. 74 and 75 from Rachel Komen, and the Plots Nos. 76 and 77 from Juliana, the defendant herein. The properties were initially owned by their father, Chebochok. In the confirmed grant in respect of the estate of Chebochok, the plots Nos. 74 and 75 were transmitted to PCEA but the plots No. 76 and 77 were transmitted to Juliana and titles were issued in her name. He stated that they have tried to look for Juliana to transfer the properties to the church in vain and they have tried to look for her without success. That is the reason they have come to court.

4. I have seen in the confirmed grant of 20 July 2007 that these properties were distributed to the defendant. I have also seen the sale agreement dated 21 April 2008 between the defendant and Upendo Church through which she sold her interest in the suit properties. It is not very clear to me why she did not execute the requisite transfer documents to transfer the properties to the Church although it does appear to me that she probably moved on with her life and she has not thought of coming back to complete the transfer to the plaintiff. Whatever the case may be, she has not come to court to dispute the sale to Upendo church, or deny having sold the land to them, or give any reason as to why the properties should not be transferred to the church.

5. Being purchasers, and having also confirmed that the full purchase price has been paid, I have no reason not to order the transfer of the suit properties to the plaintiff. I therefore allow this suit. I hereby order the defendant to execute all requisite instruments to transfer the suit properties to the plaintiff. If the defendant does not do so, or if she cannot be traced, the Deputy Registrar is directed to execute the said documents. The defendant is also permanently restrained from any interference with the suit properties.

6. The plaintiff shall also have the costs of this suit.

7. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 28th day of March 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Ms. Nancy Njoroge holding brief for Mr. Matiri for the plaintiff.

No appearance for the defendant.

Court Assistant: Nelima Janepher

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU