



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 246 OF 2017

AMOS KOSHOLA GARI.....1ST PLAINTIFF

LAURYN D. MWACHIMA.....2ND PLAINTIFF

VERSUS

KADZO KITI KOMBE alias KADZO KITI FITINI Administrator of

FITINI KALUGO KONDE.....DEFENDANT

JUDGMENT

1. By a Complaint dated 4th December 2017, Amos Koshola Gari and Lauryn D. Mwachima, the Plaintiffs herein pray for an order compelling the Defendant to transmit the land reference number Malindi/Marereni/Msumarini/310 into her names and thereafter be compelled to obtain the Land Control Board consent and effect transfer of six acres into the names of the Plaintiffs or the Deputy Registrar to execute in her place.
2. The suit arises from the Plaintiff's contention that the two Plaintiffs and the Defendants entered into a contract for the sale of six acres of land but the Defendant has thereafter reneged on the execution of the documents necessary to transfer the property to the Plaintiffs.
3. The Defendant Kadzo Kiti Kombe alias Kadzo Kiti Fitini was served with summons on 19th December 2017 as per an affidavit of service filed herein on 8th February 2018 but she neither entered appearance nor filed a defence to the Plaintiff's claim. This matter therefore proceeded by way of formal proof.
4. The 2nd Plaintiff Lauryn Daniel Mwachima testified herein as PW1 and the Plaintiffs' sole witness. She told the Court that the 1st Plaintiff is her husband and that she had his authority to plead and testify on his behalf. The two of them filed a joint statement dated 4th December 2017. PW1 adopted the said statement as her evidence in-chief herein.
5. It is the Plaintiff's case that on or about 22nd December 2014, they entered into a contract for the sale of six acres of land which was to be excised from LR No. Malindi/Marereni/Msumarini Scheme/310 belonging to the estate of the late Fitini Kalugo Konde, the Defendant's late mother.
6. Under the said Sale Agreement, it was agreed that the Defendant would lodge a petition for Letters of Administration for the Mother's estate to enable her effect transfer of the property into the Plaintiff's name. It was further agreed that the Plaintiffs had to finance and/or facilitate filing the Petition for letters of administration.
7. The Plaintiffs aver that the Defendant did lodge the application for letters of administration which was paid for by the Plaintiffs as agreed. A Grant of the letters was thereafter issued and confirmed on 15th November 2016 but the Defendant has since refused to effect transmission into her names for purposes of effecting a transfer of the property to the Plaintiffs' names.
8. I have perused and considered the Plaintiffs pleadings, their testimony and the evidence produced before this Court. The Plaintiffs who are a husband and wife crave an order compelling the Defendant to transmit six acres of LR No. Malindi/Marereni/Msumarini Scheme/310 into their names.
9. In support of their claim the Plaintiffs told this Court that the Defendant is the son of and the administrator of the estate of the late Fitini Kaluno Konde, who died on 8th January 2006. The said parcel of land as per a copy of the title deed produced by the Plaintiffs (Exhibit 3) measures 2.87 Ha in total.

10. By an agreement dated 22nd December 2014(Pexh 1), the Defendant agreed with the Plaintiffs that he would sell to them six acres from the said parcel of land. In this regard, it was the Plaintiffs testimony that they agreed to finance the filing of a succession cause by the Defendant to enable her transfer the portion of the land sold to them into the Plaintiffs name.
11. From the material placed before me, the Defendant subsequently filed ***Succession Cause No. 109 of 2019; In the Matter of the Estate of Fitini Kalugo Konde (Deceased)*** at the High Court in Malindi. On 15th November 2016, a Grant of Letters of Administration Intestate (Pexh 5) was issued to the Defendant herein.
12. The Plaintiffs are now aggrieved that having obtained the said Grant in her name, the Defendant has now refused to effect the transfer as agreed.
13. As it were, the Defendant despite service neither entered appearance nor filed a response to the Plaintiffs' claim herein. The Plaintiffs testimony was therefore uncontroverted and I did not find any reason to doubt the same.
14. From the material placed before me, it is apparent that the Defendant entered into a sale agreement to transfer six acres of all that parcel of land known as Malindi/Marereni/Msumarini Scheme/310 into the Plaintiffs name. It is also apparent that the Defendant as the sole beneficiary of the estate of Fitini Kalugo Konde (Deceased) was issued with a Grant of Letters of Administration intestate for the estate of the Deceased and there is no plausible reason why she has neglected to effect the transfer.
15. In the circumstances herein, I do find merit in the Plaintiffs suit and I am satisfied that they have proved their case on a balance of probability as against the Defendant. The same is allowed as prayed.
16. The Defendant shall pay the costs of this suit to the Plaintiffs.

Dated, signed and delivered at Malindi this 14th day of March, 2019.

J.O. OLOLA

JUDGE