



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT & LAND COURT

ELC CASE NO. 1457 OF 2016

ALICE WANJIRU MWAURA.....PLAINTIFF

=VERSUS=

PETER NJUGUNA MWAURA & 3 OTHERS.....DEFENDANTS

JUDGEMENT

1. The plaintiff brought this suit against the defendants claiming the following reliefs:-

i. The agreement arrived at by consent before the Deputy Commissioner be enforced.

ii. The parcel of land Kabete/Nyathuna/ 2432, instead of being registered jointly in the names of the plaintiff and Esther Waithera Mwaura, be sub-divided equally and each of them to have a title , and to share equally rental structures on the land, formerly known as Kabete/Nyathuna/ 665.

iii. The land Registrar to remove the restriction fraudulently caused to be entered by the 4th defendant.

iv. Any other orders the Honourable Court may deem just and necessary to end this dispute.

2. The 1st defendant is son to the plaintiff. The 2nd defendant is a co wife to the plaintiff. The 3rd defendant is a surveyor and the fifth defendant is the Chief of Nyathuna Location.

3. The defendants who were served with summons to enter appearance and file defence neither entered appearance nor filed defences. The hearing therefore proceeded by way of formal proof.

4. The plaintiff had purchased an unregistered parcel of land when her husband was alive. The husband later sold that parcel and married the 2nd defendant. A dispute arose which went for arbitration by the area chief who decided that that the plaintiff's husband buys an alternative land for the plaintiff. The plaintiff's husband bought an alternative plot but they later agreed that they sell that plot so that they purchase one near their home. This happened and plot No. LR Kabete/ Nyathuna/ 665 was purchased. The plaintiff contributed Kshs.300,000/= and the 1st defendant contributed Kshs.200,000/.

5. As the plaintiff was ailing, it was decided that the land be registered in the name of the 1st defendant for sub-division to be done later. When the plaintiff called upon the 1st defendant to subdivide the land, he declined to do so. The dispute regarding the sub-division was taken to the office of the Deputy County Commissioner. It was agreed that the land was to be sub divided into three portions. The 1st defendant was to have two portions registered in his name and a third one to be registered jointly in the names of the plaintiff and the 2nd defendant.

6. A surveyor was engaged who was given money to subdivide the land into the three portions as had been agreed upon. The plaintiff waited for titles to come out as agreed but when this was not forthcoming , she went to Kiambu land Registry where she discovered that the land had been subdivided into three portions namely; Kabete/Nyathuna/ 2431,2432 and 2433. LR Kabete / Nyathuna /2431 and 2432 had been registered in the name of the 1st defendant and LR No. Kabete/Nyathuna/2433 in the name of Joyce Njeri Ndungu.

7. The plaintiff contends that the subdivision was not done in accordance with the agreement which was signed by all the parties. The plaintiff states that Joyce Njeri Ndungu who has been registered as owner of **Kabete/Nyathuna/2433** was not party to the agreement.

8. I have gone through the documents produced by the plaintiff. It is clear that an agreement was reached before the Deputy County Commissioner's office on 27th November 2013 where it was agreed that the 1st defendant was to have two portions measuring 0.325 each and the plaintiff and the 2nd defendant were to take 0.65 of the suit property. The agreement was signed by the plaintiff, the 1st and 2nd defendants. It is important to note that this agreement was signed without the input of a surveyor. This explains why the acreage upon subdivision by a surveyor changed. This notwithstanding, it is clear that there was agreement reached between the plaintiff, 1st and 2nd defendants on the subdivision.

9. The 1st defendant was therefore wrong to have brought in a stranger to the agreement who was given one portion. There is a restriction registered on LR No. Kabete/Nyathuna/2432. The plaintiff's evidence that this restriction was registered at the instance of the 4th defendant on grounds that there was a pending succession. The plaintiff testified that her son who is the 1st defendant is alive and the issue of succession does not arise.

10. The parcel known as Kabete/Nyathuna 2432 is the larger among the three. This is the portion which ought to have been registered in the names of the plaintiffs and the 2nd defendant. The plaintiff's evidence is uncontroverted. I find that the plaintiff has proved her case against the defendants on a balance of probabilities. I enter judgement in her favour against the defendants as follows:-

a. The parcel No Kabete/Nyathuna/2432 should be registered in the names of Alice Waithera Mwaura and Esther Waithera Mwaura in equal shares in place of Peter Njuguna Mwaura.

b. The restriction registered against title Kabete/Nyathuna/2432 should be removed forthwith.

c. The costs of this suit shall be paid to the plaintiff by the defendants.

Dated, Signed and delivered at Nairobi on this 7th day of March 2019.

E.O.OBAGA

JUDGE

In the absence of the Plaintiff and her advocate who were aware of the date and time of delivery of Judgement.

Court Assistant: Hilda

E.O.OBAGA

JUDGE