



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MURANG'A

E.L.C NO. 50 OF 2018

NATHALINA WANJIKU WANJAMA.....1ST PLAINTIFF

PETER WAITHAKA WANJAMA.....2ND PLAINTIFF

ERNEST MURITU WANJAMA.....3RD PLAINTIFF

VINCENT KIHARA WANJAMA.....4TH PLAINTIFF

SAMUEL KIRENGE WANJAMA.....5TH PLAINTIFF

BENSON GATHOGO WANJAMA.....6TH PLAINTIFF

VERSUS

AGOSTINE KAMURI WANJAMA.....DEFENDANT

JUDGMENT

1. The claim of the Plaintiff begun by a plaint dated the 21/6/18 and filed on even date. In it the Plaintiff seeks the following orders;
 - a. A declaration that the Defendant holds land parcel No LOC9/KIRURI/1489 in trust for himself and the 2nd -6th Plaintiffs in equal shares.
 - b. An order directing the Defendant to dissolve the trust subsisting in land parcel No LOC9/KIRURI/1489 and subsequently transfer equal portions to the Plaintiff sons who are the 2nd -6th Plaintiffs.
 - c. Costs of the suit.
 - d. The Defendant filed a written statement of defense dated the 5/7/18 filed on the 9/7/18.
3. In the suit the Plaintiff asserts that the suit land is family land held by the Defendant in trust for them. In the statement of defense the Defendant asserts that the suit land was given to him by his grandfather the late Kamuri Muritu and registered in his name following a judgement of the Court in succession cause No 99 of 1994 where judgment was delivered on the 10/4/75. The Defendant expressly denies any mutual agreement or at all with the Plaintiffs in respect to the suit land.
4. During the preliminary stages in preparation of the trial there were efforts sanctioned by the Court for the parties to settle the matter out of Court. The parties nevertheless reported their irreconcilable differences resulting in the case proceeding for full hearing.
5. At the hearing the parties gave oral evidence and relied on their written statements which are produced and are on record.
6. At the conclusion of the hearing the parties elected to file written submissions. The Plaintiff filed on the 29/1/19 and the Defendant filed his on the 15/2/19.
7. The Court has considered the pleadings, the witness statements and the exhibits relied and the submissions for and on behalf of the parties. There are only 2 issues calling for determination in this suit namely;

a. Whether the suit land is held by the Defendant in trust for the Plaintiffs.

b. Who should bear the costs of the suit?

8. In order for a party to successfully prosecute suit on grounds of customary trust as alleged in this case, Courts have in different judgments settled the grounds as seen in the case of **Isack M’Inanga Kieba Vs Isaaya Theuri M’Lintari & Isack Ntongai M’Lintari SCOK Petition 10 of 2015**, where the Supreme Court held as follows;

“Each case has to be determined on its own merits and quality of evidence. It is not every claim of a right to land that will qualify as a customary trust. In this regard, we agree with the High Court in **Kiarie v. Kinuthia**, that what is essential is the nature of the holding of the land and intention of the parties. If the said holding were for the benefit of other members of the family, then a customary trust would be presumed to have been created in favour of such other members, whether or not they are in possession or actual occupation of the land. Some of the elements that would qualify a claimant as a trustee are: the land in question was before registration, family, clan or group land; the claimant belongs to such family, clan, or group; the relationship of the claimant to such family, clan or group is not so remote or tenuous as to make his/her claim idle or adventurous; the claimant could have been entitled to be registered as an owner or other beneficiary of the land but for some intervening circumstances; the claim is directed against the registered proprietor who is a member of the family, clan or group”. (emphasis mine).

9. In the case of **Peter Gitonga Vs Francis Maingi M’Ikiara Meru HC.CC NO. 146 OF 2000**- it was stated that:-

“A “trust” can be created under customary law and the circumstances surrounding registration must be looked at to determine the purpose of the registration. This was what led Muli J. to say this; “Registration of titles are a creation of law and one must look into the considerations surrounding the registration of titles to determine whether a trust was envisaged”. (emphasis is mine).

10. In this case there is a determination on record relating to legibility for the beneficial ownership of the lands that belonged to the deceased, the late Kamuri Muritu. He disposed of his lands during his lifetime. Going by the finding of the Court in succession cause No 99 of 1974 all the land belonging to the deceased was distributed in the following manner;

- | | | |
|-------------------------|---|-----------|
| a. Samson Muritu | - | 6 acres |
| b. Muritu Kamuri | - | “ |
| c. Waiguru Kamuri | - | “ |
| d. Wanjiku w/o Wanjama | - | “ |
| e. Wangechi w/o Wanjama | - | “ |
| f. Wambui w/o Kangara | - | “ |
| g. Augustine Kamuri | - | 7.8 acres |

11. The properties were distributed by the Defendant’s grandfather in his lifetime.

12. Going by the finding of the Court in the proceeding para, it is beyond par adventure that the deceased during his lifetime bequeath the suit land in its entirety to the Defendant and the Court so found on the 10/4/75.

13. There is no evidence led before the Court to warrant the disturbance of the deceased actions and the findings of the Court in the succession cause No 99 of 1974.

14. It is a sound policy of the law that litigation must come to an end. This manner of relitigating must be discouraged. This matter was determined by a competent Court of law. The 1st Plaintiff who is the mother of the 1st -6th Plaintiffs and the Defendant was also given 6 acres of land in accordance with the oral will of the said Kamuri Muritu. It is clear from the proceedings in 1974 that she was not only present but fully participated in the proceedings in the case. There is no evidence that she challenged the decision of the Court then or at all. She does not have the luxury of resurrecting the matter 34 years later.

15. In respect to the 2nd issue on costs, costs follow the event. More so in the case of the Plaintiffs who are tending to frontier of vexatious litigants in view of the fact that this is a matter that stands adjudged.

16. In the upshot the Plaintiffs case fails. It is dismissed with costs in favour of the Defendant.

Orders accordingly

DELIVERED, DATED AND SIGNED AT MURANG’A THIS 11TH DAY OF APRIL 2019.

J. G. KEMEI

JUDGE

Delivered in open Court in the presence of:

T M Njoroge for the 1st – 6th Plaintiffs

Defendant: Agostine Kariuki present in person.

Kuiyaki and Njeri, Court Assistants