



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 1415 OF 2014

MARY WANGUI NJOROGE

(Suing as the Administratrix of the Estate of Julius Njoroge Chomba)...PLAINTIFF

VERSUS

KASARANI HOLDINGS COMPANY.....1ST DEFENDANT

PAUL MWANGI.....2ND DEFENDANT

JUDGEMENT

1. By plaint dated 7th November 2014 the plaintiff sued the defendants jointly and severally seeking that:-

(a) The defendants whether by themselves, agents, servants, employees or otherwise howsoever be restrained from entering, remaining upon, constructing, trespassing upon and/or interfering with the plaintiff's quiet possession of the property described as plot number 155 comprised in LR NO. 8119.

(b) A permanent injunction against the defendants prohibiting whether by themselves, their servants, officers or agents from entering upon, remaining upon, transferring, occupying, leasing, charging, mortgaging, constructing, assigning or interfering with the estate of the deceased's quiet possession of property described as plot number 155 comprised in LR No. 8119.

(c) A mandatory injunction do issue compelling the defendant, their servants and/or agents and any other person occupying property known as Plot number 155 comprised in LR No. 8119 to unconditionally vacate and remove any permanent or semi permanent structures deposited or erected thereon at their own costs.

(d) A declaration that the estate of the deceased is the lawful, legal, absolute and rightful owners of the property known as plot number 155 comprised in LR No. 8119 in Kasarani within Nairobi County.

(e) Damages for trespass against the defendants.

(f) Costs of this suit together with interest thereon for such period and at such rate as this honourable court may deem appropriate.

(g) Any such other or further relief as this honourable court may deem appropriate to grant.

2. Together with the plaint she filed a notice of motion seeking injunctive orders against the defendants.

3. The hearing date was given in court in the presence of both counsel. On the date of the hearing neither the defendant nor his counsel were present. The court was satisfied that they were aware of the hearing date and directed that the matter proceeds exparte.

4. It is the plaintiff's case that she is the wife of the late Julius Njoroge Chomba and is a co-administratrix of his Estate. It is her case that her late husband entered into an agreement of sale with Mabuu Kamau who was a member of the 1st defendant. It was for the sale of plot number 155 which is comprised of LR NO. 8119 within Kasarani, Nairobi County hereinafter referred to as "the suit property". The deceased Julius Njoroge Chomba was then registered as a shareholder of the 1st defendant and acquired legal interest in the suit property. It was registered in the name of the 1st defendant in trust for the deceased.

5. Later on the 1st defendant directed its members to transfer their respective plots to their names and the deceased disbursed money to cater for the transfer process which the plaintiff took over after his death.

6. The 1st defendant then conspired with the 2nd defendant, who is a director of the 1st defendant to fraudulently, illegally and without notice allocate the suit property to the 2nd defendant. The 2nd defendant has since entered the suit property and put up permanent and semi-permanent structures thereon.

7. At the trial, the plaintiff adopted her witness statement dated 7th November 2014. She also produced as exhibits:-

- (a) Copies of grant of letters of administration.
- (b) A letter from the registrar of companies.
- (c) A sale agreement dated 26th August 2001.
- (d) Certificates issued
- (e) Receipts of payments
- (f) Copies of letters from Nairobi City County dated 27th July 2018 and 15th August 2018.
- (g) Photographs of the scene.

They were produced as exhibit P1-P16 respectively.

8. The plaintiff stated that she contributed Kshs.20,000 to one Joseph Kariuki who was the treasurer of the 1st defendant to process the title of the suit property. She was advised to deposit the money in the personal account of the said Joseph Kariuki but was not given any receipt. She says that the suit property be reinstated in the name of her late husband.

9. The defendants and their counsel were not present. The plaintiff's case is uncontroverted.

10. I have considered the pleadings and the evidence on record. The issues for determination are:-

- (i) Whether or not the plaintiff has demonstrated that she has a legal interest in the suit property.***
- (ii) Whether or not the 2nd defendant has trespassed and entered into the suit property and constructed thereon.***
- (iii) Is the plaintiff entitled to the reliefs sought?***

11. I have considered the documents produced as exhibit by the plaintiff. There is no doubt that the late Julius Njoroge Chomba purchased the suit property. This is confirmed by the sale agreement dated 26th August 2001. A certificate was issued and he became a member of the 1st defendant. What remained was only the issuance of the title deed. This evidence has not been controverted by the defendants. The 2nd defendant did not appear in this court to demonstrate his claim over the suit property. I find that the deceased Julius Njoroge Chomba is the owner of the suit property having purchased it.

12. There is no doubt that the 2nd defendant has trespassed onto the suit property and put up permanent structures. The plaintiff produced photographs of the scene as exhibit P3. These photographs have also not been challenged.

13. I find that the plaintiff has proved her case as against the defendants on a balance of probabilities. In the case of **Esther Ndegi Njiru & Another vs Leonard Gatei [2014] eKLR**, Mutungi J proceeded to cancel a title deed that has been illegally obtained and stated as follows:-

“Under Section 26(1) of the Land Registration Act, 2012 the title of a registered proprietor is prima facie evidence that the proprietor is the absolute and indefeasible owner of the land subject to any encumbrances, easements, restrictions and conditions contained or endorsed in the certificate. Such title however may be challenged on the ground of fraud or misrepresentation to which the proprietor is proved to be a party and or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

14. It is the plaintiff's contention that the 1st defendant fraudulently allocated the suit property to the 2nd defendant who is one of its directors despite knowledge of the deceased's estate proprietary rights. It is her case that the 1st defendant conspired with the 2nd defendant to fraudulently change the records at the 1st defendant's company upon the demise of Julius Njoroge Chomba (deceased).

15. All in all, I find that the plaintiff has proved her case as against the defendants in a balance of probabilities. I enter judgment in her favour as follows:-

(a) That a permanent injunction be and is hereby issued restraining the defendants whether by themselves, agents, servants, employees, or otherwise howsoever from entering upon, remaining upon, constructing, trespassing upon and/or interfering with the plaintiff's quiet possession of the property described as Plot No. 155 comprised in LR No. 8119.

(b) That a permanent injunction be and is hereby issued prohibiting the defendant whether by themselves, their servants, officers, agents from entering upon, remaining upon, transferring, occupying, leasing, charging, mortgaging, constructing, assigning or interfering with the state of the deceased's quiet possession of property described as Plot No. 155 comprised in LR 8119.

(c) A mandatory injunction be and is hereby issued compelling the defendants, their servants, and/or agents and any other person occupying property known as Plot No. 155 comprised in LR No. 8119 to unconditionally vacate and remove any permanent or semi-permanent structures or materials deposited or erected thereon at their own costs.

(d) A declaration be and is hereby issued that the estate of the deceased is the lawful legal absolute and rightful owners of the property known as Plot Number 155 comprised in LR No. 8119 in Kasarani within Nairobi County.

(e) Damages for trespass Kshs.150,000.

(f) Costs of the suit and interest.

It is so ordered.

Dated, signed and delivered in Nairobi on this 19TH day of JUNE 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendants

.....Court Assistant