



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC CASE NO. 253 OF 2011

MARY NGENDO NGUL.....1ST PLAINTIFF

SAMUEL NGUGI KINUTHIA.....2ND PLAINTIFF

VERSUS

SAMUEL NGUGI MUIRURI.....DEFENDANT

JUDGMENT

1. The 1st Plaintiff is mother the 2nd Plaintiff. The Defendant is a nephew to the 1st Plaintiff. The Plaintiffs filed this suit against the Defendant seeking the following reliefs:-

a. A declaration that the Defendant holds Land Parcel Nos: Karai/Gikambura/577 and 583 on trust for himself and the Plaintiffs in equal shares.

b. An order that a half portion of land be excised out of Land Parcel Nos: Karai/Gikambura/577 and 583 and those half parcels be transferred to the Plaintiffs jointly.

c. Costs of the suit.

2. The history of this suit can be traced from one Kiromo Warari alias Ngugi Wararai who died in or around 1974 (Kiromo Warari). Kiromo Warari had two wives. The first wife was Wanjiku Kiromo who had two sons. The first son was Muiruri Ngugi who is the father of the Defendant. The second son was Nginya Njoroge. The second wife was Njeri Kiromo who had only one daughter who is the 1st Plaintiff.

3. Kiromo Warari was the registered owner of LR No. Karai/Gikambura/577 which was later registered in the name of Muiruri Ngugi. Kiromo Warari had also land at Gataara area in Kabete as well as a plot. Kiromo Warari instructed his first born son to sell the land at Gataara as well as the plot and go and buy other parcels. Muiruri Ngugi sold the land at Gataara as well as the plot and went and purchased LR No. Karai/Gikambura/583 and Karai/Gikambura/575 which were registered in his name. Muiruri Ngugi later transferred LR No. Karai/Gikambura/575 to his brother Nginya Njoroge..

4. Muiruri Ngugi died on 3rd August, 1979. His wife Lilian Kabui Muiruri and his son who is the Defendant herein took out letters of administration in respect of his estate. The two properties that is LR No. Karai/Gikambura/577 and 583 were registered in the names of the administrators of his estate by way of transmission. Lilian Kabui Muiruri has since died and therefore the two properties are in the name of the Defendant.

5. The 1st Plaintiff states that she briefly cohabited with Mr. Kinuthia but the union ended after a brief stay and that she returned to her father's place where she cultivated one of the two parcels which are the subject of this suit until she was chased away after the Defendant and his late mother obtained grant in respect of the estate of Muiruri Ngugi. The 1st Plaintiff states that she had been asking for her share from Muiruri Ngugi but Muiruri Ngugi died before he could give her, her share of the land which belonged to her father.

6. The 1st Plaintiff states that Muiruri Ngugi had transferred LR Karai/Gikambura/575 to his brother but he died before he could give her her rightful share. The 1st Plaintiff contends that LR No. Karai/Gikambura/577 was ancestral land and that LR No. Karai/Gikambura/583 was bought through proceeds from the land and plot at Gataara which belonged to her father and the Plot that is LR No. Karai/Gikambura/583 was registered in the name of Muiruri Ngugi in trust for the family of her father. The 1st Plaintiff argues that as Muiruri Ngugi gave his brother LR No. Karai/Gikambura/575, she is also entitled to half share in LR Karai/Gikambura/577 and 583 which were registered in the name of Muiruri Ngugi by virtue of him being the first born of their father.

7. The 1st Plaintiff testified that she tried to have the grant given to the Defendant and his late mother revoked but the application was dismissed on a technicality. She filed a claim at the Kikuyu Land Disputes Tribunal which claim succeeded when the elders granted her 3 acres out of LR No. Karai/Gikambura/577 but the decision of the elders was later quashed by the High Court which held that the elders had no jurisdiction to deal with issues of title to land. The 1st Plaintiff therefore argues that her step brother Muiruri Ngugi was holding the two suit properties in trust for her and that she is entitled to half share of each of the two suit properties.

8. The Defendant who is now registered as owner of the two suit properties contends that the 1st Plaintiff is not entitled to any share of the suit properties as she is married to one Kinuthia and that she has her own land. The Defendant further states that LR No. Karai/Gikambura/577 was transferred by his grandfather to his father as a gift and that LR No. Karai/Gikambura/583 was purchased by his father and therefore the 1st Plaintiff has no claim over the same. The Defendant further contends that the Plaintiffs claim is statute barred.

9. The Defendant states that his grandfather had shared out property to his sons. The Defendant's grandfather asked his father to transfer LR No. Karai/Gikambura/575 to his uncle because the grandfather did not want the two brothers to stay together.

10. I have carefully gone through the evidence adduced by the Plaintiffs and that adduced by the Defendant. I have also considered the Written Submissions by the Plaintiffs. The Defendant had been given 7 days to file their submissions on the date when this Judgment date was reserved. As at the time of writing this judgment, the Defendant had not filed his submissions and if any were filed, they are not in the file.

11. The issues which emerge for determination are firstly, whether the Plaintiffs' suit is statute barred, secondly, whether there is existence of a trust in respect of the two suit properties in as far as the registration of the same in Muiruri Ngugi's name is concerned vis – a- vis the claim by the 1st Plaintiff and thirdly which order should be made on costs.

12. The Defendant contended that the Plaintiffs suit is statute barred. The Plaintiff on the other hand contended that the suit is not statute barred. The law is clear that there is no limitation on claims founded on trust. I therefore find that the Plaintiffs' suit is not statute barred.

13. On whether there exists a trust in this case, the issue of existence of a trust or nonexistence of the same is a matter of evidence. In the instant case, there is evidence that Kiromo Warari had two wives. The first wife had two sons and the second wife had one daughter. There is also evidence that the 1st Plaintiff was briefly married to a Mr. Kinuthia in or around 1953 but she divorced him and came back to her parents place. The 1st Plaintiff came back even before her father died in or around 1974. The Defendant while being cross-examined by the Plaintiff's Lawyer stated that he was aware that the 1st Plaintiff had been married but that they differed with the husband on or around 1962. It is therefore clear that the 1st Plaintiff remained unmarried and there is evidence that she was cultivating one of the suit properties until after the succession process of her late step brother Muiruri Ngugi when she was chased away. The 1st Plaintiff testified that she lives in rented premises.

14. I have gone through the proceedings before the Kikuyu Land Disputes Tribunal. In these proceedings which were produced by the Plaintiffs, it clearly came out that Kiromo Warari had land at Gataara in Kabete area. He also had a plot. This plot and land were sold by Muiruri Ngugi and it is the proceeds from these parcels that purchased LR Nos. Karai/Gikambura/575 and Karai/Gikambura/583. The two parcels were registered in the name of Muiruri Ngugi as he was the first born of Kiromo Warari.

15. There was an argument by the Defendant herein during the proceedings in the Kikuyu Land Disputes Tribunal that his father was allowed to sell the parcels and apply proceeds thereof as he wished. The elders found that this could not be the case as Kiromo Warari loved all his children equally and he would not have favoured some and leave out the 1st Plaintiff who had differed with her husband. The elders found and rightly so that the 1st Plaintiff was entitled to some land. The elders decided to give the 1st Plaintiff 3 acres out of LR Karai/Gikambura/577 but the elders decision was quashed by the High Court.

16. The evidence adduced before the Tribunal is very important and it shows that the Defendant's father was indeed holding the suit properties in trust for the other family members. As Muiruri Ngugi had transferred LR No. Karai/Gikambura/575 to his brother, there is no way the 1st Plaintiff cannot benefit from the two suit properties. Under Kikuyu Customary Law, an unmarried daughter is entitled to inherit her father's land.

17. The family of Kiromo Warari were staying on LR No. Karai/Gikambura/577. This land was initially registered in the name of Kiromo Warari. It was later transferred to Muiruri Ngugi who upon his demise the land is now registered in the name of the Defendant his Co-administrator having died. This is the property where the family of Kiromo Warari were staying. This is family land and there is no way one of the family members would have had it transferred to himself as a gift from the original owner. The property in LR Karai/Gikambura/583 was bought from proceeds of sale of Kiromo Warari's land and plot at Gataara. It is therefore family land and registration in the name of the Defendant's father was in trust for the rest of the family.

18. The late Muiruri Ngugi shared one of the family land to his brother Nginya Njoroge. It will be discriminatory if the 1st Plaintiff were to be left out from her father's land. There is uncontroverted evidence that 1st Plaintiff is unmarried and is living in rented premises. I therefore find that Muiruri Ngugi was holding the two suit properties in trust for the 1st Plaintiff. I therefore find that the Plaintiffs have proved their case on a balance of probabilities. **I allow the same in terms of prayers (a), (b) and (c) of the Plaint dated 30th May, 2011 and filed in Court on 2nd June, 2011.**

Dated, Signed and delivered at Nairobi on this 10th day of June, 2019.

E.O.OBAGA

JUDGE

In the absence of parties who had been notified of the date and time of delivery of Judgment.

Court Assistant – Kajuju.