



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 996 OF 2012

KHADIJA WAITHIRA YUSUF.....PLAINTIFF

VERSUS

YUSUF KIMANI MOHAMMED.....1ST DEFENDANT

MOHAMED YUSSUF GITHIO.....2ND DEFENDANT

HALIMA WARUGURU YUSUF.....3RD DEFENDANT

JUDGEMENT

1. This suit was commenced by through the plaint dated 31/10/2018. The Plaintiff's case is that by the confirmed grant issued on 12/11/2000, she and her co- administratix, Mariam Nduta were bound to distribute the assets of the Estate of their late husband, Yusuf Kimani Mohammed comprising two properties, that is land reference numbers Dagoretti/Riruta/74 and Rare/Teret/Block 1/1142 in equal shares to their own names.

2. The Plaintiff discovered that the original title deed over Dagoretti/Riruta/74 had been subdivided into various portions and subsequently transferred to various persons without the Plaintiff's knowledge and consent. She further contended that the subdivision was done fraudulently and through misrepresentation of facts by the Defendants. She averred that the 1st Defendant had even transferred one of the portions being Dagoretti/Riruta/6293 to himself, thus depriving her of her share to assets of the estate of her late husband. She sought judgement against the Defendants jointly and severally for nullification of the parcels known as Dagoretti/Riruta/6281, 6282, 6283, 6284, 6285, 6286, 6287, 6288 ,6289 ,6292, and 6293; the immediate reinstatement of Dagoretti/Riruta/74; and the eviction of the 1st Defendant from Dagoretti/Riruta/6293.

3. The 1st Defendant denied the Plaintiff's claim in his defence dated 20/01/2019. He contended that vide **High Court Succession Cause No.2089 of 1999(Nairobi)- Estate of Yusuf Kimani Mohammed (deceased)**, the estate of the late Yusuf Kimani Mohammed comprising two properties was subdivided equally between his widows after which each widow was to subdivide her share among the heirs of the respective houses. He further averred that Dagoretti/Riruta/6293 was registered in his name, this being the share of his late father Mohamed Githio Yusuf. On the allegations of fraud and misrepresentation leveled against the Defendants in the plaint, the 1st Defendant averred that the Plaintiff lodged a criminal complaint against him at the Directorate of Criminal Investigations (DCI), Kabete alleging forgery of land documents in relation to the suit property which the DCI dismissed and discontinued for lack of evidence to support the criminal charges. He prayed for a dismissal of the Plaintiff's claim.

4. The 2nd Defendant in his defence dated 04/02/2019 averred that the estate of his mother Mariam Nduta Yusuf was to share half of the properties constituting the assets of the estate of the late Yusuf Kimani Mohammed with the Plaintiff, but the 2nd Defendant only came to learn that the suit properties had been subdivided in the course of the hearing of the summons for confirmation of his mother's estate in **Nairobi Succession Cause No. 164 of 2015**, in which the subdivision formed the substance of the protest filed by the 3rd Defendant in that cause. He denied being part of the fraudulent dealings set out in the plaint. He averred that he was opposed to the subdivision and prayed that the Plaintiff's suit against him be dismissed with suits.

5. The 3rd Defendant denied the Plaintiff's claim vide her defence dated 02/04/2019, and averred that the surveying and subdivision of L.R No. Dagoretti/Riruta/74 was consistent with the distribution ordered by the court in the succession cause.

6. The court has considered the claim set out in the plaint, the defences filed, the evidence adduced by witnesses together with the submissions filed by counsel. It is not disputed that the suit property comprised part of the assets of the estate of the late Yusuf Kimani Mohammed which were distributed by the court in Nairobi High Court Succession Cause No. 2089 of 1999 - Estate of Yusuf Kimani Mohammed (deceased). The properties were to be subdivided equally between the Plaintiff and her co-wife Mariam Nduta Yusuf (deceased).

It is also clear from the evidence adduced that Dagoretti/Riruta/74 was subdivided into smaller portions and a title over one of the portions created being Dagoretti/Riruta/6293 was issued in the name of the 1st Defendant in a manner that is disputed by the Plaintiff and the 2nd Defendant.

7. The two properties comprising the assets of the estate of the late Yusuf Kimani Mohammed were supposed to be subdivided equally between the Plaintiff and her co-wife Mariam Nduta Yusuf, now deceased. The administrators were to subdivide their shares in accordance with the units in their respective houses. However, Dagoretti/Riruta/74 was subdivided without the Plaintiff's knowledge and without adhering to the confirmed grant.

8. The 1st Defendant admitted that in 2012, he was issued with title a title over Dagoretti/Riruta/6293, which was hived out of the suit property. In an attempt to explain how he got his title, the 1st Defendant stated that his father, Mohamed Githio Yusuf who died on 16/05/2017 subdivided the suit land and gave him his share during his lifetime. The court notes that letters of administration of the estate of Mohamed Githio Yusuf-deceased and who is the 1st Defendant's father have not been taken out.

9. On being asked how the land was transferred to his name during cross-examination, the 1st Defendant told this court that his grandmothers who were administrators of the suit property signed a transfer for him. This contradicts the Plaintiff's evidence where she denied signing a transfer in respect of the suit property. The 1st Defendant did not produce a copy of the transfer or the consent of the land control board that was used in the transaction to prove his assertion that the Plaintiff signed the transfer for land.

10. The court can only reach the conclusion that the process of subdividing Dagoretti/Riruta/74 was not legal as it was done contrary to the grant confirmed in Nairobi High Court Succession Cause No.2089 of 1999- Estate of Yusuf Kimani Mohammed (deceased). Mohamed Githio Yusuf was not an administrator of the Estate of the late Yusuf Kimani Mohammed and therefore did not have the legal capacity to carry out the subdivision of the suit property as he claimed he did. It is not clear how he got hold of the title deed over the suit property while the administrators of his grandfather's estate were still alive.

11. The 2nd Defendant, one of the administrators of the estate of Mariam Nduta Yusuf, agreed with the Plaintiff's assertion that the subdivision was not proper. He testified that he only became aware of the subdivision in the course of proceedings in Nairobi Succession Cause No.164/2015, which confirms that the subdivision was hurriedly undertaken and the administrators and some of the beneficiaries were kept in the dark.

12. The court finds that the subdivision of the suit property was not done for the benefit of all beneficiaries in accordance with the confirmed grant in the succession cause. The manner in which the subdivision was done was geared towards disinheriting some of the beneficiaries who are deserving of shares of the estate of the late Yusuf Kimani Mohammed.

13. The court grants the prayers sought in the plaint. The new parcel of land will be given one parcel number in line with the land registration laws. The cost of resurvey and consolidation of the portions created from the subdivision of Dagoretti/Riruta/74 will be borne by the 1st Defendant. The 1st and 3rd Defendants will pay the Plaintiff the costs of this suit.

Dated and delivered at Nairobi this 8th day of August 2019

K.BOR

JUDGE

In the presence of: -

Ms. S. Amwanzo holding brief for Mr. Ngugi for the Plaintiff

Mr. Ngata Kamau for the 1st and 3rd Defendants

Mr. Ngata Kamau holding brief for Mr. Muchiri for the 2nd Defendant

Mr. V. Owuor- Court Assistant