



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 1524 OF 2014

REGINA NYAMBURA NGONYA

**NYINAMU GAKONYA (Suing in their capacity as the legal administrators
of the Estate of the late NGONYA WA GAKONYA.....PLAINTIFFS**

VERSUS

PETER GATHURU CHEGE.....1ST DEFENDANT

ERNEST MWINI WANGUL.....2ND DEFENDANT

CO-OPERATIVE BANK OF KENYA LIMITED.....3RD DEFENDANT

CHIEF LAND REGISTRAR, NAIROBI.....4TH DEFENDANT

JUDGEMENT

1. The Plaintiffs filed this suit in their capacity as the legal administrators of the estate of the late Ngonyo wa Gakonya seeking an injunction to restrain the 2nd and 3rd Defendants from evicting the Plaintiffs from the land known as Dagorretti/Riruta/1568. Further, they seek a declaration that this parcel of land forms part of the estate of the late Ngonyo wa Gakonya and seek to have the 2nd Defendant's title cancelled in the plaint filed on 8/12/2014. The Plaintiffs claim that the 1st Defendant entered into an agreement with the late Ngonyo wa Gakonya on 19/12/1979 for the sale of ¼ acre of land which was to be excised from Dagorretti/Riruta/944 which at the time was described as plot number B/1648. The Plaintiffs claim that the 1st Defendant gave the late Ngonyo Wa Gakonya possession of the land and that he resided on it and his family has been occupying the plot and contended therefore that the land formed part of his estate. The Plaintiffs claimed that the 1st and 2nd Defendants colluded to transfer the Suit Property to the 2nd Defendant who charged it to the 3rd Defendant to secure payment of a loan of Kshs. 9,100,000/=. The 2nd Defendant called the 1st Plaintiff in July 2014 and demanded that they vacate the land.

2. The 3rd Defendant denied the Plaintiffs' claim in its defence dated 27/5/2015 and averred that it advanced a banking facility to the 2nd Defendant for the purchase of the land known as Dagoretti/Riruta/1648 against which a charge in its favour was registered. The 1st and 2nd Defendants did not file defences.

3. Both Plaintiffs gave evidence and produced a copy of the sale agreement dated 19/12/1979 entered into between the 1st Defendant and Ngonyo wa Gakonya for the purchase of ¼ acre of the land known Dagoretti/Riruta/944 which was then known number B/1648. Under the agreement, possession was to be given to the purchaser on execution of the agreement and once the certificate of title was out, it was to be transferred to the purchaser. Clause 7 provided that if the transfer did not take place the purchaser was to be refunded the sum of Kshs. 30,000/= plus damages being 10% of the purchase price and the value of improvements. The Plaintiff also produced photographs showing some developments on the land and relied on the affidavit sworn by the 1st Defendant on 21/3/2012 in which he confirmed that he had no claim against the estate of the late Ngonyo wa Gakonya regarding plot number B/1648. They produced a copy of the title deed issued to the 1st Plaintiff over Dagoretti/Riruta/1658 dated 5/8/2005 and a search confirming that position. They confirmed that a title deed was never issued to the late Ngonyo wa Gakonya.

4. William Mugo Maina gave evidence for the 3rd Defendant. He confirmed that the bank granted banking facilities to the 2nd Defendant and caused a charge to be registered against the suit land upon transfer of the land to the 2nd Defendant. The bank stated that it carried out due diligence and that the name of Ngonyo wa Gakonya did not appear on the title. The witness refuted the claim that the bank had acted fraudulently and maintained that the estate of Ngonyo wa Gakonya had no proprietary interest in the Suit Property.

5. Parties filed submissions which the court has considered. The Plaintiffs submitted that having failed to file their defences, the 1st and 2nd

Defendants are deemed to have admitted the averments in the plaint. The Plaintiffs submitted that the 1st Defendant acted fraudulently when he sold the Suit Property to the 2nd Defendant. Further, that the valuer sent by the 3rd Defendant to value the Suit Property for purposes of the charge should have noted that the Plaintiffs had lived on the land for more than 30 years.

6. The 3rd Defendant submitted that the late Ngonya wa Gakonya should have exercised his right to seek a refund of the purchase price pursuant to Clause 7 of the sale agreement dated 19/12/1979. The 3rd Defendant submitted that a mere sale agreement coupled with occupation would not have conferred title or ownership to the Plaintiffs or the late Ngonya wa Gakonya before them. The 3rd Defendant faulted the Plaintiffs and the late Ngonya Wa Gakonya for failing to assert their ownership over the property either through registration of the title in their name or by adverse possession from 1979 when the sale agreement was executed. The 3rd Defendant submitted that the Plaintiffs were guilty of laches and acquiescence. It submitted that its charge over the Suit Property which was registered against the title on 14/3/2014 was valid and urged the court to dismiss the Plaintiffs' claim.

7. The Plaintiffs admitted that the 1st Defendant processed a title over the suit land in 2005. They also claimed that they were appointed administrators of the estate of the late Ngonya wa Gakonya in High Court Succession Cause No. 1733 of 2009. The Plaintiffs did not indicate whether the suit land formed part of the assets of estate of the late Ngonya wa Gakonya in the succession cause. It is also not clear when Ngonya wa Gakonya died and what efforts he made during his lifetime to assert his rights over the suit property, including claiming adverse possession to the land.

8. The sale agreement relied on by the Plaintiffs was entered into in 1979 by the late Ngonya wa Gakonya, which is 35 years before this suit was filed in court. Section 7 of the Limitation of Actions Act stipulates that an action may not be brought by any person to recover land after twelve years from the date the right of action first accrued to the person or the person through whom they claim. The right to recover land first accrued to Ngonya wa Gakonya when the vendor failed to transfer the suit land to him. That right was extinguished 12 years after the date of execution of the sale agreement dated 19/12/1979.

9. The Plaintiffs' claim is therefore time-barred and is hereby dismissed. Each party will bear its own costs.

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

K.BOR

JUDGE

In the presence of: -

Mr. G. Maina for the Plaintiffs

P. Kiplangat for the 3rd Defendant

Mr. V. Owuor- Court Assistant

No appearance for the 1st and 2nd Defendants