



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 46 OF 2018

THOMAS NDWIGA NJOGU.....1ST PLAINTIFF

SOSPETER GACHOKI NJOGU.....2ND PLAINTIFF

SAMUEL KARUGA NJOGU.....3RD PLAINTIFF

GEOFFREY MURIUKI NJOGU.....4TH PLAINTIFF

MARY WANJIKU NJOGU.....5TH PLAINTIFF

HELLEN MUTHONI NJOGU.....6TH PLAINTIFF

LOISE WAMBURA NJOGU.....7TH PLAINTIFF

VERSUS

PERIS WANJIRA MURIITHI (Sued as Legal representative of the

Estate of PATRICK MURIITHI NJOGU – DCD).....DEFENDANT

JUDGMENT

INTRODUCTION

The plaintiffs vide a plaint dated 31ST July 2018 sought the following prayers:

(a) A declaration that Patrick Muriithi Njogu (now deceased) held land parcel No. NGARIAMA/THIRIKWA/481 in trust for himself and the plaintiffs hereby and further that Patrick Muriithi Njogu, (now deceased) held land parcel No. NGARIAMA/THIRIKWA/1524 in trust for the 4th plaintiff, Geoffrey Muriuki Njogu.

(b) An order for determination of the trust by directing that 7/8 share out of land parcel No. NGARIAMA/THIRIKWA/481 be transferred to the plaintiffs to own the same in equal shares.

(c) An order for determination of trust by directing that land parcel No. NGARIAMA/THIRIKWA/1524 be transferred and registered in the name of Geoffrey Muriuki Njogu.

(d) Costs of the suit and interests.

By way of a counter-claim, the defendant filed a statement of defence through the firm of Ndegwa & Ndegwa Advocates dated 31ST October 2018.

PLAINTIFFS CASE

The 1ST plaintiff in this case recorded a statement dated 31ST July 2018 which was filed together with the plaint, verifying affidavit and list of

documents. In his witness statement, the 1st plaintiff stated that sometimes in the year 1960, his parents had some marital differences which forced his mother to go back to her parent's home. Since they were young, they accompanied her. Around 1972, their grandfather one Samuel Karuga together with his family members and friends organized for a funds drive so that they could buy a parcel of land for his mother's family. Thereafter, they bought land parcel No. NGARIAMA/THIRIKWA/481 measuring approximately 7 acres. They then all moved with their mother and siblings to the said land and settled the same year. However, the land was registered in the name of their first born son, Patrick Muriithi Njogu who by then was an adult. In the year 1995, or thereabouts, his brother Patrick Muriithi Njogu even allowed him to occupy his house which he had constructed on the suit land as he had by then moved to Kiamutugu Market. The 1st plaintiff stated that he even bought the house at Ksh. 250,000/= which his brother used to clear a loan balance with Kenya Commercial Bank. He further stated that since his brother had not sub-divided the land amongst all the other siblings and since he wanted to enjoy a better owner occupier house allowance, he requested his brother to do an affidavit to the effect that he had an interest over the suit land and that he was entitled to get a share which he obliged. He therefore concluded that his late brother Patrick Muriithi Njogu held parcel No. NGARIAMA/THIRIKWA/481 in trust for the entire family of his mother, Esther Kathugu Njogu.

The 4th plaintiff on the other side recorded his statement the same date and in which he stated that sometimes in 1972, their mother and the rest of the siblings moved to land parcel No. NGARIAMA/THIRIKWA/481 and settled there. However, their last born child Karuga was born and brought up on that land. Sometimes in 1997, he bought land parcel No. NGARIAMA/THIRIKWA/1524 from one Mariko Njuki measuring two (2) acres. He then took possession of the said land where he did extensive developments on it. The said parcel of land was registered in the name of his eldest brother Patrick Muriithi Njogu (deceased) to hold in trust for him. He stated that when his brother passed on, his wife who is the defendant herein acted contrary to the expectations and even filed two succession causes secretly intended to disinherit the other dependants and beneficiaries including the plaintiff in this case.

The plaintiffs also called two other witnesses namely Silas Munene Karuga and Benjamin Njagi Mugo who adopted their statements recorded on 31st July 2018 and 6th March 2019 respectively.

DEFENDANT'S CASE

The defendant filed defence denying the plaintiffs' claim and put them to strict proof thereof. However, the defendant did not attend Court during the hearing of this case.

DECISION

I have considered the testimonies of the 1st and 4th plaintiffs and their two witnesses. I have also considered the documents contained in the list of documents tendered by the plaintiffs. The plaintiffs in their evidence laid foundation how the suit properties were registered in the names of Patrick Muriithi Njogu (deceased) who was their eldest brother to hold in trust for his own benefit and also for the benefit of the rest of his siblings. The trust which the plaintiffs have sought to enforce by this action emanates, not only arises from their possession and occupation of the suit properties, but also from the Kikuyu Customary Law which required that land should be registered in the name of the first born son to hold in trust for himself and his siblings. From the evidence adduced by the plaintiffs and the witnesses, it is clear that Patrick Muriithi Njogu (deceased) was the plaintiffs' eldest brother. I am satisfied that his registration as proprietor of the suit properties was in trust for himself and his siblings including the plaintiffs. That being the case, I am satisfied that the plaintiffs have on a balance of probability proved their claim that the defendant holds the suit properties in trust for them. Consequently, I find and hold that they are entitled to a share of the suit properties as prayed in the plaint. The defendant did not tender any evidence disputing the plaintiffs' evidence in respect of the acreage of the suit properties.

The totality of my evaluation of the evidence adduced by the plaintiff and their witnesses is that the plaintiffs have proved their case on a balance of probability. I therefore enter judgment for the plaintiffs against the defendant as prayed in the plaint. The defendant shall also bear the costs of this suit. It is so ordered.

READ, DELIVERED and SIGNED in open Court at Kerugoya this 20th day of September, 2019.

E.C. CHERONO

ELC JUDGE

20TH SEPTEMBER, 2019

In the presence of:

1. *Mr. Maina Kagio for Plaintiffs*

2. *Defendant/Advocate – absent*

3. *Mbogo* – *Court* *clerk* – *present*