



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO.649 OF 2011

SAMUEL NGUGI KARUNGU.....1ST PLAINTIFF

ESTHER WAMBUI NGUGI.....2ND PLAINTIFF

DAVID NGINYI NGUGI.....3RD PLAINTIFF

VERSUS

ESTHER WANGECI CHEGE NG'ANG'A.....DEFENDANT

JUDGEMENT

1. The plaintiffs have filed this suit against the defendant seeking:-

(a) A declaration that the defendant has always held half of Plot No. Dagoretti/Waithaka/562 in trust for the plaintiffs and therefore the plaintiffs are entitled to the said half out of the said land.

(b) An injunction restraining the defendant by herself, servants, employees and or agents from interfering with the quiet enjoyment of the portion of land the plaintiffs occupy in Plot No. Dagoretti/Waithaka/562.

(c) An order as to costs.

(d) Any other or further relief as this honourable court may deem fit and proper to grant.

2. PW1 Samuel Ngugi Karungu told the court that the defendant is the widow of his eldest brother Chenge Ng'ang'a Karungu. He told the court that the land was registered in the name of his elder brother Chenge Ng'ang'a who held it in trust for himself, the 1st plaintiff and Wainaina Ng'ang'a. They built houses on the said land each in his own portion and the boundaries are clearly marked. He prays for his portion out of Land Parcel Number Dagoretti/Waithaka/562.

3. PW2 David Nginyi Ngugi, as son to PW1, confirmed what PW1 told the court. That the suit land was registered in the name of James Chege Ng'ang'a who held it in trust for himself and the 1st plaintiff. The land measures 0.75 hectares. He also relied on the documents in the list of documents. He prays that they be given a half portion of the suit land.

4. PW3 Esther Wambui Ngugi confirmed what PW1 and PW2 told the court that they are entitled to a half of the suit land.

5. DW1, Esther Wangechi Chege Ng'ang'a, confirmed that the suit land was registered in the name of her late husband. That she brought in surveyors who subdivided the said land into two portions. She told the court the plaintiffs have not asked her to take them to the land control board for subdivision to be approved. She further told the court that the plaintiffs are residing on their portion of their land. She does not know why she has been brought to court.

6. At the close of the trial, the parties tendered written submissions. I have considered the pleadings, the evidence tendered and the written submissions filed. It is not in doubt that Land Parcel Number Dagoretti/Waithaka/562 is registered in the name of the defendant. She told the court that she is willing to oversee the excision of the portion of the suit land which the plaintiffs are occupying.

7. It is the plaintiffs' case that the suit land measures 0.75 hectares. They claim the elders decided that they should get 0.49 hectares. However, the plaintiffs submitted no evidence in respect of the said council of elders decision.

8. The burden of proof was on the plaintiffs to prove that there was demarcation and consolidation. It is however clear that the suit land did not exist during the said demarcation and consolidation.

9. It is clear that the plaintiffs are occupying a portion of the suit land. This is the portion they are entitled to.

10. In my opinion this is an issue which should have been resolved among the parties. The plaintiffs have failed to prove that they are entitled to a larger portion that they are occupying.

11. Accordingly, I enter judgment in favour of the plaintiffs as follows:-

(a) A declaration is issued that the defendant has always held a portion of Plot Number Dagoretti/Waithaka/562 in trust of the plaintiffs and therefore the plaintiffs are entitled to the said portion out of the said land.

(b) An order of injunction is hereby issued restraining the defendants, by herself, servants, employees and/or agents from interfering with the quiet enjoyment of the portion of the land the plaintiffs occupy on Plot Number Dagoretti/Waithaka/562.

(c) Each party do bear own costs.

It is so ordered.

Dated, signed and delivered in Nairobi on this 24th day of October 2019.

.....

L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiff

Mr. Njoroge for Ms Muigai for the Defendant

Kajuju -Court Assistant