



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC NO. 84 OF 2017

JOAN MUSUNDI WAFULA.....1ST PLAINTIFF

JOHN MUKHWANA NABILAYI WAFULA.....2ND PLAINTIFF

VERSUS

JANE ROSE SAKINA NDUGUYU.....DEFENDANT

RULING

1. The suit herein was filed on **4/5/2017**. The plaintiffs and the defendant are related. The defendant is the step-mother to the plaintiffs.
2. The plaintiffs were claiming that the defendant held land **Title No. Kitale Municipality Block 17/Bidii/816** in trust for them, the same having devolved to her from their late father. They sought orders of injunction and declaration against the defendant.
3. The defendant filed a defence on **16/5/2017** denying the claim. She averred that in the year **2014** when the suit property was registered in her name the plaintiffs were adults of over 20 years old and deceased could if he had wished so, registered the land in their names. She attributed the plaintiffs' action of filing suit to influence on the part of one **James Wekesa Wafula** her step-son and apparently a sibling to the plaintiffs who is allegedly under a false belief he can forcefully take away what lawfully belongs to the defendant.
4. A reply to defence was filed on **2/6/2018** in which the allegations against James Wekesa Wafula were denied. The same was amended on **28/9/2018** to include an allegation that the defendant was still married to one Pius Peter Kiplangat Boit in the year **2013** and therefore she was not in a position to have contracted another marriage with their father. In a reply to the amended reply to defence filed on **3/10/2018** in which the defendant averred that she had capacity to contract another marriage in **2013** for the reason that she had officially separated from the said Pius Peter Kiplangat Boit before her marriage to Hillary Pius Wafula.
5. The plaintiffs filed a trial bundle on the **19/10/2019** in which they annexed a copy of the judgment dated **18/4/2013** in **Kitale High Court Divorce Cause No. 7 of 2011 Janerose Sakina Nduguyu -vs- Pius Peter Kiplangat Boit**. The conclusion of that judgment was issuance of a decree absolute dissolving the marriage between the defendant herein and Pius Peter Kiplangat Boit. They also annexed a copy of the green card showing that the defendant was first registered as the owner of **Kitale Municipality Block 17/Bidii/816** on **25/3/2014**.
6. Having set out the facts of the parties' respective claims as hereinabove this court is able to have a proper perspective of each party's grievance and its origins. However, the conclusion is that this matter arises out of a family dispute.
7. The family is the building block of the community and the nation and where this court can in the process of application of the law it should apply such measures as would reduce any acrimony in a family setting or stop it all together.
8. **Section 27** of the **Civil Procedure Act** gives this court discretion to determine the issue of who is to pay costs in any proceedings. It provides as follows:-

27.(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest

shall be added to the costs and shall be recoverable as such.”

9. I have analysed the circumstances of this case as above and arrived at the conclusion that the matters involved herein are of family nature.

10. When this court inquired of the parties in court when the main suit was being withdrawn on **7/10/2019**, it was admitted that the plaintiffs had lived with the defendant for some time.

11. In my view an award of costs against any of the parties may strain the already stretched family bonds between the parties herein even further and possibly extend such deleterious effects to the kin who are not named as parties herein and for that reason I order that each party shall bear their own costs.

Dated, signed and delivered at Kitale on this 9th day of October, 2019.

MWANGI NJOROGE

JUDGE

9/10/2019

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bisonga holding brief for Khisa for the plaintiffs

N/A for the defendant

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

9/10/2019