



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 93 OF 2016

VERONICA WAMBUI MUIBIRI.....PLAINTIFF

VERSUS

VERONICA WANGUI MWANGI.....1ST DEFENDANT

JOSEPH WANJOHI MWANGI.....2ND DEFENDANT

JUDGMENT

BACKGROUND

In a plaint dated 24th June 2016, the plaintiff sought the following orders:

1. An order that the defendant vacates from the plaintiff's parcel of land L.R. No. Kiine/Nguguini/3670 forthwith failing which she be forcefully evicted to enable the plaintiff to utilize her land.

2. Costs of this suit.

In a statement of defence dated 1st August 2016 and filed the same date, the 1st defendant who had initially been sued alone denied the plaintiff's claim and puts her to strict proof thereof. The defendant later sought leave to amend her defence to include a counter-claim and also enjoin the 2nd defendant. The plaintiff was granted corresponding leave to amend and file her plaint within 15 days from the date of service thereof.

In an amended statement of defence amended on 21st July 2017, the 1st defendant averred that she is the legal representative of the Estate of the late Mwangi Gaitho who is also the registered proprietor of L.R. No. Kiine/Kibingoti/Nguguini/3205 which is separate and distinct and does not share a common boundary with L.R. No. Kiine/Kibingoti/Nguguini/3206. The defendant further averred that soon after the death of Mwangi Gaitho, the 2nd defendant in the counter-claim purported to cause the sub-division of L.R. No. Kiine/Kibingoti/Nguguini/3206 and hived off a part of L.R. No. Kiine/Kibingoti/Nguguini/3205 to form Kiine/Kibingoti/Nguguini/3270. The defendant further averred that L.R. No. Kiine/Kibingoti/Nguguini/3205 did not abut into L.R. No. Kiine/Kibingoti/Nguguini/3205 at the time of the initial sub-division and the abuttal was specifically designed to steal part of the deceased's Estate.

PLAINTIFF'S CASE

The plaintiff stated that she is the registered proprietor of the suit property which has a common boundary with L.R. No. Kiine/Nguguini/3205 registered in the name of Mwangi Gaitho (deceased), the defendant's husband.

In 2007, Mwangi Gaitho (deceased) sub-divided his land parcel No. Kiine/Nguguini/2541 into five (5) portions and allocated to himself and his 4 children. After his demise, Kiine/Nguguini/2541 was sub-divided into Kiine/Nguguini/3205 and 3206 and Kiine/Nguguini/3206 further sub-divided and each of his children obtained their share. That the suit property was registered in the name of Joseph Wanjohi Mwangi one of the sons of the deceased which he transferred to the plaintiff by virtue of sale. However, the defendant has trespassed into her parcel of land and planted crops without her permission and an effort to have her vacate the suit property has borne no fruit.

DEFENDANTS CASE

The defendant by way of defence averred that she has lived on the suit land for more than 10 years. She stated that land parcel No. Kiine/Nguguini/3205 and 3206 are separated by a public pathway. After the death of her husband, Joseph Wanjohi Mwangi purported to hive off a portion of L.R. No. Kiine/Nguguini/3205 to create L.R. No. Kiine/Nguguini/3206 which he sold to the plaintiff. Therefore he sold her husband's portion to the plaintiff.

By an order dated 14th July 2017, the defendant was allowed to amend her defence and file counter-claim and Joseph Wanjohi Mwangi was enjoined as 2nd defendant in the counter-claim.

COUNTER-CLAIM

The defendant stated that the 2nd defendant did not possess a valid title and any subsequent dealing in L.R. No. Kiine/Nguguini/3270 was null and void. She sought a declaration that L.R. No. Kiine/Nguguini/3270 was excised from Kiine/Nguguini/3205 when the registered owner was deceased and amounted to intermeddling. That the subsequent transfer to the plaintiff by the 2nd defendant be cancelled and Kiine/Nguguini/3270 be declared as forming part of Kiine/Nguguini/3205.

2ND DEFENDANT'S DEFENCE

In his defence, the 2nd defendant stated that L.R. No. Kiine/Nguguini/3205 was retained by the deceased while L.R. No. Kiine/Nguguini/3206 was transferred into his 4 children including him. After his death, L.R. No. Kiine/Nguguini/3206 was partitioned into 4 portions and he got L.R. No. Kiine/Nguguini/3670 which he sold to the plaintiff.

DISPOSITION

I have considered the evidence adduced by the parties. I have also considered the pleadings and the documents produced in evidence. In her list of documents filed in Court on 24th June 2016, the plaintiff has attached a copy of joint title deed in the names of Mwangi Gaitho (deceased) and his sons and daughters in respect of land parcel No. Kiine/Nguguini/2541 measuring approximately 0.771 Ha. The land is proposed to be sub-divided into two portions in the names of Mwangi Gaitho ID/NO. 3383715, Joseph Mutugi Mwangi ID/NO. 20539814 and Teretha Wambura Mwangi ID/NO. 13693650 measuring 0.311 Ha and Wanjohi Mwangi and Nicholus Murimi Mwangi ID/NO. 13693724 measuring 0.4 Ha of the other part. The title deed was issued on 5th September 2007. From the title deed, the sub-division of the original land gave rise to two new parcels of land being No. Kiine/Kibingoti/Nguguini/3205 and Kiine/Kibingoti/Nguguini/3206 which closed the title on partitioning. The next item is the certificate of search which confirmed the details contained in the title deed. The next document is a proposed sub-division of parcel No. Kiine/Kibingoti/Nguguini/2541 prepared by M/S NNERS SURVEYORS & ESTATE AGENTS OF P.O. BOX 53166 NAIROBI – 723 Embu. The said document proposed the sub-division of parcel No. Kiine/Kibingoti/Nguguini/2541 to two as follows:

A - 0.367 Ha. (appro).

B - E = 0.101 Ha (appro).

The proposed sub-division is purported to have been approved by the Clerk to Council, County Council of Kirinyaga whose name is not disclosed. That document flies on the face of the title deed and the certificate of official search showing that land parcel No. Kiine/Kibingoti/Nguguini/2541 was sub-divided into two portions measuring 0.371 Ha and 0.40 Ha respectively. The two sub-divisions were registered as Kiine/Kibingoti/Nguguini/3205 and 3206. There is no sale agreement or transfer form showing who and when the transfer was effected to the plaintiff. There is also no consent from the Land Control Board purporting to transfer the suit property to the plaintiff. The original owner Mwangi Gaitho (deceased) had closed the title No. Kiine/Kibingoti/Nguguini/2541 in partition upon creation of the two new partitions No. 3205 and 3206. The first portion measuring 0.371 Ha was to be in the name of Mwangi Gaitho (deceased) while the other portion measuring 0.40 Ha was to be in the joint names of his sons and daughters including the 2nd defendant herein. However, the entire land was still registered in the name of the said Mwangi Gaitho (deceased). There is no evidence adduced how a land registered in the name of a deceased was sub-divided and transferred without the relevant statutory documents such as transfer forms, sale agreement and mutation forms. The plaintiff has not produced a sale agreement. The 1st defendant has stated in her witness statement filed on 13th December 2016 that parcel No. Kiine/Kibingoti/Nguguini/3205 was registered in the name of her husband Mwangi Gaitho (deceased) and that after his demise, the 2nd defendant purported to give out a portion of 3205 to create L.R. No. 3670 which he purported to sell to the plaintiff. She stated that land parcel No. 3670 is a creation of the plaintiff in cahoots with the 2nd defendant which is an attempt to defraud her husband's Estate. I am not persuaded that the plaintiff has proved her claim to the required threshold. She has not demonstrated where the suit property L.R. No. Kiine/Kibingoti/Nguguini/3670 was created from. She has not produced the sale agreement consent to transfer, the transfer and mutation proposing to partition the same. I am persuaded that title No. Kiine/Kibingoti/3670 is a product of fraud orchestrated by the 1st defendant in cahoots with the plaintiff against the Estate of Mwangi Gaitho (deceased). The same is therefore null and void.

The upshot of my analysis is that the plaintiff's suit is dismissed with costs. The 1st defendant's counter-claim succeeds and judgment entered in the following terms:

1. A declaration that land parcel No. KIINE/KIBINGOTI/NGUGUINI/3270 was excised off from KIINE/KIBINGOTI/NGUGUINI/3205 when the registered owner MWANGI GAITHO was deceased and no letters of Administration had been obtained and/or issued which act amounted to intermeddling.

2. The resultant title subsequently transferred to the plaintiff by the 2nd defendant is null and void and the same is hereby cancelled.

3. The purported title No. KIINE/KIBINGOTI/NGUGUINI/3270 be and is hereby declared as forming part of land parcel No. KIINE/KIBINGOTI/NGUGUINI/3205.

4. The costs of the counter-claim to be borne by the plaintiff and the 2nd defendant jointly and severally.

READ, DELIVERED and SIGNED in open Court at Kerugoya this 4th day of October, 2019.

E.C. CHERONO

ELC JUDGE

4TH OCTOBER, 2019

In the presence of:

1. Plaintiff/Advocate – absent
2. Defendants/Advocate – absent
3. Wachira – Court clerk – present