



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 368 OF 2017

ESTHER WANGARI MAINA.....PLAINTIFF

VS

JULIUS KIRUMA KARIUKI.....DEFENDANT

JUDGMENT

1. The Plaintiff filed suit on the 11/5/17 seeking the following orders;

a. An order for the Defendant to remove the restriction lodged against No. LOC13/GAKOE/168(suit land).

b. Cost of the suit.

2. The Plaintiff avers that she is the registered owner of the suit land. That the land was sold to one Mwangi Ruhohi by her mother during her lifetime. The Defendant has lodged a restriction on the suit land without any legal claim thus preventing her from transferring the suit land to the said Mwangi Ruhohi.

3. That despite demand issued against the Defendant to remove the restriction, he has continued to ignore.

4. The Defendant resisted the Plaintiffs claim through his defence filed on the 31/5/17. He contends that he is a co-purchaser with Mwangi Ruhohi of the suit land and hence his claim is for half share. That his restriction is legitimate to protect his interest in the suit land.

5. At the hearing the Plaintiff led evidence and informed the Court that the Defendant and Mwangi Ruhohi are her maternal uncles. That the suit land devolved to her upon the succession of the estate of her mother, the late Hannah Wanjiru Maina Mburuti. She added that she had instructions from her mother to effect transfer of the suit land to Mwangi Ruhohi because he had fully paid for the land. That she successfully sought and obtained Land Control Board consent but the restriction of the title halted the process hence the filing of the suit.

6. She testified that despite demanding the removal of the restriction, the Defendant ignored it without giving any reasons. She stated that the Defendant is not a purchaser of the suit land. That he bought another land for which he received full refund from her late mother.

7. PW2- Njenga Mwangi testified that he is the sister of the Plaintiff and the nephew of the Defendant. He reiterated the evidence of PW1 and stated that the Defendant is not a purchaser of the suit land. He put him to strict proof as to the evidence of the alleged sale, if any.

8. The Defendant -DW1 led evidence and adopted his statements dated the 31/5/17 and 4/6/19. He led evidence that he contributed Kshs 214,000/- towards the medical needs and upkeep for his late sister which monies entitled him to half share of the suit land. He produced an itemised list of the sums paid.

9. He added that he has refused to remove the restriction because he wanted to be the administrator of the estate of her sister but the lawyer advised that the Plaintiff instead be appointed. He admitted that he received a refund of Kshs 400,000/- from her late sister in respect to the purchase of another piece of land separate from the suit land. That he bought the suit land jointly with Mwangi Ruhohi and he is entitled to half share.

10. DW2- Mary Wanjiku Maina stated that the Defendant and Mwangi Ruhohi jointly purchased the suit land from her late mother. That her mother called all her children and informed them about it. It was her evidence that the Defendant built a house for her mother and paid medical bills and upkeep for which was converted to 2 acres of land. She confirmed that the Defendant received a refund of Kshs 400,000/- from her mother.

11. DW3- Gladys Waigumo Irungu testified that the Defendant and Mwangi Ruhohi bought the suit land. That the Defendant built a house for her late mother and in return was to get a half share of the suit land.

12. Parties filed written submission which I have read and considered.

13. The issue for determination is whether or not the Defendant is entitled to half share of the suit land and secondly whether the restriction should be removed.

14. The undisputed facts are that the parties are related. The Plaintiff is the daughter of the late Hannah Wanjiru Maina. She is the niece of the Defendant. The Defendant and Mwangi Ruhohi are her maternal uncles.

15. It is the claim of the Defendant that he is entitled to half of the suit land on account of monies expended on the Plaintiff's mother and which entitles him to half share of the land. It is his evidence that he bought the land in equal shares with Mwangi Ruhohi. That the lodgement of the restriction is to protect his claim on the land.

16. The Plaintiff on the other hand argues that the Defendant did not purchase the suit land. That her mother sold the land to Mwangi Ruhohi and she intends to effect the transfer as per her mother's wish to him except she is prevented from doing so by the restriction on the suit land. She avers that the restriction is unlawful and should be removed.

17. Section 3(3) of the law of contract Act states as follows;

“No suit shall be brought upon a contract for the disposition of an interest in land unless—

(a) the contract upon which the suit is founded—

(i) is in writing;

(ii) is signed by all the parties thereto; and

(b) the signature of each party signing has been attested by a witness **who is present when the contract was signed by such party:**

18. The Defendant has not shown any evidence of a written contract as provided in law to support his contention that he purchased half share of the land. He did not file any counterclaim in furtherance of his defence that he is a purchaser.

19. It is the finding of the Court that the Defendants claim is unsupported.

20. As to whether the restriction should be removed, the provisions of Section 76 of the Land Registration Act provides that;

“(1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such persons as the Registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.

(2) A restriction may be expressed to endure—

(a) for a particular period;

(b) until the occurrence of a particular event; or

(c) until a further order is made, and may prohibit or restrict all dealings or only or the dealings that do not comply with specified conditions, and the restriction shall be registered in the appropriate register”

(2A) A restriction shall be registered in the register and may prohibit or restrict either all dealings in the land or only those dealings which do not comply with specified conditions.”

21. Having failed to proof his claim on the suit land, the continued stay of the restriction is unjustified and the finding of the Court is that it should be removed.

22. The costs follow the event.

23. Final orders;

a. The restriction lodged on the title on the 18/10/16 be and is hereby removed forthwith.

b. The Land Registrar is ordered to remove the restriction and rectify the register accordingly.

c. The Defendant shall meet the cost of the suit.

24. It is so ordered

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 14TH DAY OF NOVEMBER 2019

J. G. KEMEI

JUDGE

Delivered in open Court in the presence of:

Munyori HB for Mwangi Kamau for the Plaintiff

Defendant: Present in person

Ms Irene and Ms Njeri, Court Assistants