



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MURANG'A

ELC NO 19 OF 2019

PETERO MWANGI KARANJA.....PLAINTIFF

VERSUS

JAMES KIRAGO KARANJA (sued as the representative or administrator of the estate of

MARY WAITHIRA KARANJA , deceased).....DEFENDANT

JUDGMENT

1. The Plaintiff filed suit against the Defendant seeking the following orders;
 - a. Transfer of 0.25 acres out of land parcel No LOC18/GITHIMA/1217 (suit land) as per the judgement in Muranga HCCC Succession cause No 460 of 2014.
 - b. Costs of the suit.
2. It is the Plaintiff's case that he purchased 0.25 acres out of the suit land from the late Mary Waithira Karanja, the then registered owner of the suit land. That she died on 30/7/2006 before transferring the land to him.
3. That before her death the dispute went before the LDT No 53 of 2005 in Kigumo where the elders ordered the said Mary Waithira Karanja to transfer the portion of the land to him.
4. That the parties were appointed joint administrators of the estate of Mary Waithira Mwangi where the Succession Court set aside the said portion of land to abide the determination of this honourable Court.
5. In his brief defence the Defendant denied the Plaintiffs claim and asserted that the Plaintiff has not proved his claim on the portion of 0.25 acres and that in any event the decision of the Land Dispute Tribunal was ultra vires its jurisdiction hence null and void. He urged the Court to dismiss the claim as unfounded.
6. Parties elected to canvass the claim through written submissions that I have read and considered.
7. In brief the Plaintiff reiterated the contents of the claim and argued that the Succession Court under para 15(ii) of the judgement ordered that the remainder of the LOC 18/Githima /1217 shall devolve to the Defendant. That the Defendant is bound by the decision of the Succession Court to transfer the portion of the suit land to the Plaintiff.
8. That the order of the LDT No 53 of 2005 has not been set aside appealed and or vacated and hence it is still valid.
9. The Defendant submitted that the Land Dispute Tribunal had no jurisdiction to hear the matter and thus its decision is null and void abinitio.
10. The key issue for determination is whether the Plaintiff has proved his claim. Section 107 of the Evidence Act states as follows;

“Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”

11. It is the Plaintiffs case that he purchased a portion of 0.25 acres out of the suit land from the late Mary Waithira Karanja. The Plaintiff is therefore pursuing a claim of a purchasers right. A purchaser's right must be supported by evidence. The Plaintiff however failed to prove this claim by way of documentary evidence or otherwise. The law in respect to sale of land is clear. 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;

12. It is the finding of the Court that the Plaintiff failed to discharge this burden.

13. This Court has been referred to a decision of the LDT No 53 of 2005 in which the Plaintiff anchors his claim in the suit land. It is trite that section 3 of the Land Dispute Act now repealed did not clothe that tribunal with powers to determine dispute in registered land such as this. Time and again Courts in Kenya have held that any proceedings and decision of the Land Dispute Tribunal that was in excess of its jurisdiction is null and void and of no legal effect.

14. The law is well settled that a decision which is arrived at without jurisdiction is a nullity. In the case of **Sir Ali Bin Salim vs. Shariff Mohamed Shatry Civil Appeal No. 29 1940** it was stated that; -

“If a Court has no jurisdiction over the subject matter of the litigation, its judgments and orders however precisely certain and technically correct are mere nullities and not only voidable; they are void and have no effect either as estoppel or otherwise and may not only be set aside at any time by the Court in which they are rendered, but be declared void by every Court in which they may be presented. It is well established law that jurisdiction cannot be conferred on a Court by consent of parties and any waiver on their part cannot make up for the lack or defect of jurisdiction”.

15. With due respect to the Plaintiffs' Counsel on record, I have carefully read the judgement of my Senior Brother Mr Justice Kanyi Kimondo in the Succession Court No 460 of 2014, Muranga and I find nowhere in the said judgement did the honourable probate Court direct this Court to order that the portion of the suit land belongs to the Plaintiff. The succinct judgment on para 13 referred the claim of 0.25 for determination to this honourable Court. In the final orders the Court ordered as follows;

“That the portion of 0.25 acres in LOC 18/GITHIMA/1217 claimed by Petro Mwangi Karanja is hereby set aside and shall abide the determination by the ELC Court in Muranga”. (emphasis is mine).

16. In exercise of my jurisdiction conferred upon this Court under Art 162(2)(b) of the Constitution read together with Section 13 of the Environment and Land Court Act and upon considering the evidence tendered on submissions of the parties the Court has come to the conclusion that the Plaintiff has failed to prove his claim in 0.25 acres in LOC 18/GITHIMA/1217.

17. In the upshot the Plaintiff's suit is dismissed with costs to the Defendant.

18. It is so ordered.

DATED DELIVERED & SIGNED AT MURANG'A THIS 19TH DAY OF DECEMBER 2019.

J.G. KEMEI

JUDGE.

Delivered in open Court in the presence of:

Mureithi HB for Kirubi for the Plaintiff

Maina HB for Karuga Wandai for the Defendant

Irene and Njeri, Court Assistants