



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII

ELC CAUSE NO. 88 OF 2014

I O A.....PLAINTIFF

-VERSUS-

C B.....DEFENDANT

JUDGEMENT

The Plaintiff commenced the suit herein by a Plaint dated 20th February, 2014. The Plaintiff avers that at material times to the suit herein the Plaintiff and the Defendant lived as husband and wife and that by a decree of a court the marriage between them was dissolved on the 8th of May, 2006.

The Plaintiff averred that at the dissolution of the marriage the parties did not own any property and that upon the dissolution of the marriage the defendant on the 28th September, 2013 without any right caused a caution to be registered in her favour in relation to **Land parcel No. WEST KITUTU/[particulars withheld]** claiming a beneficial interest.

The Defendant contends that the registration of the caution has caused him to be denied access to credit facilities to use the suit land as a collateral.

The Plaintiff has thus filed the suit herein to have a declaration issued to declare the caution registered on the parcel of land as null and void.

The Defendant upon service of summons had filed a defence to the plaintiff claim and contends that the suit land is a common matrimonial property and that she is the mother of a child sired by the Plaintiff herein whose interest must be catered for.

The Defendant further alleges that the plaintiff has been selling part of land and has been squandering the proceeds and there is a likelihood that he will sale the remaining portion to her detriment.

When the matter came up for hearing the plaintiff testified that the suit parcel of land was part of his inheritance which he got from the estate of his deceased father and that the same was acquired by him prior to his marriage to the Defendant.

The Defendant in her evidence stated that she was married to the Plaintiff and they have been blessed with two children. She averred that the plaintiff has been maintaining the children but she is apprehensive and concerned that the Plaintiff has been selling part of the suit land and squandering the money. On cross-examination the Defendant stated that she did not contribute anything on the land and she is not claiming ownership.

I have considered the pleadings and evidence before and submissions before me and the issue for determination before me is whether the suit property is part of matrimonial property and whether the caution registered on the land is valid.

In determining the first issue the Plaintiff has tendered in his evidence a copy of title in respect of the suit land it is evident that the suit land was part of estate of his father that devolved to him through inheritance and that the same was acquired prior to his marriage.

The Defendant during cross-examination stated that she did not contribute anything to the acquisition of the said land.

From the evidence before me and the testimony of the witness the defendant has failed to rebut the evidence of the Plaintiff to the extent that the suit land was acquired during the subsistence of the marriage.

Since the suit land was owned by the Plaintiff prior to contracting the marriage the same cannot be deemed to be and/or part of matrimonial property.

In my view the Plaintiff herein has proved his case on a balance of probability and I issue the following orders:-

- 1. A declaration that the caution over land parcel West Kitutu/[particulars withheld] is null and void.**
- 2. A permanent injunction is hereby issued against the defendant from claiming or interfering with that parcel of land known as West Kitutu/[particulars withheld].**
- 3. Since the Defendant has the children of the plaintiff I make no orders as to costs.**

DATED, SIGNED and DELIVERED in open court at KISII on this 23rd day of February, 2018

Mohammed Noor Kullow

Judge

23/2/18

In the presence of:-