



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 47 OF 2017

E A RPLAINTIFF

VERSUS

F H J DEFENDANT

JUDGMENT

1. Plaintiff and the defendant used to be husband and wife. Not anymore. At the heart of the dispute is a plot located at KAMBI JUU in Isiolo town. Plaintiff is claiming the owner ship of the plot on the basis that she is the one who bought it. She is urging the court to make a declaration that the plot is hers. She also wants a permanent injunction restraining the defendant from dealing with the suit land.
2. Defendant on the other hand claims that he is the one who bought the plot in year 2005 and that when the couple separated, plaintiff stole the sale agreement along with other personal documents.
3. In his counter claim, defendant is claiming that the plaintiff holds the land in trust for him. Defendant is claiming for the land to be restituted back to him as plot No. [...] /Kambi ya Juu.
4. Plaintiff testified and called one witness who is her brother. She avers that she had taken a loan to buy the plot number [...] /Kambi Juu in Isiolo town.
5. Thereafter, the two separated. However, after 10 years the defendant apparently started bringing prospective buyers to the plot. Plaintiff states that she has been paying rates in respect of the suit plot.
6. In support of her claim the plaintiff produced the following documents as exhibits:
 - i. Letter confirming grant of a loan form Equity Bank for 30,000 shillings dated 6th July 2005.
 - ii. Cash payment voucher from Isiolo Teachers Sacco.
 - iii. Letter to the district physical planning officer Isiolo dated 9th August, 2012.
 - iv. Letter from the district physical planning officer Isiolo dated 23rd December 2012.
 - v. Application for part development plan.
 - vi. Part development plan.
 - vii. A bundle of 3 receipts from Isiolo county government.

7. Defendant testified and called two witness. Their evidence is that defendant bought the plot from one Evans Kariuki for the sum of Kshs.60,000.

8. Defendant avers that he stays on the suit land and has installed water and has also built a latrine.

9. In support of his claim, defendant has produced the following documents as exhibits:

i. A letter from the assistant chief of [particulars withheld] village indicating that defendant is a resident of that village.

ii. Isiolo water and sewerage company Ltd (IWASCO) receipt for water payment.

iii. IWASCO NCR receipt.

iv. County Government plot Registration bill.

v. Application for issue of PDP (part development plan).

10. Although the parties claim that they were once married, none of them is claiming the suit plot on the basis that it is matrimonial property. Each of them is claiming the property in their individual capacity.

11. None of the two parties have the usual documents that manifest ownership of property. In particular, none of them has availed an agreement of sale of the land, letter of allotment or title to the land. Defendant claims that it is the plaintiff who had stolen his personal documents including the sale agreement. But he has not availed any tangible evidence to confirm that claim. If the defendant had lost such crucial documents why didn't he report the matter to the police, so as to be issued with a police abstract?.

12. Despite the absence of the crucial documents to show how the land was acquired and by who, there is still a dispute to be resolved and I cannot wring my hands in despair.

13. With regard to the plaintiff's claim, I find that she has availed documents to show that she paid rates in respect of the plot no. [...] in December 2014 and in June 2016. Plaintiff is therefore the rate able owner of the suit plot. The defendant does not have such documents.

14. The document produced by the plaintiff as exhibit 3 and 4 also indicate that plaintiff was identified as the owner of the land by the Ministry of Lands. Again, defendant has no such a document.

15. Defendant has not availed even one single document to show that he is the owner of a plot known as k/ 648 in Isiolo.

16. I conclude that the plot in question belongs to the plaintiff. I proceed to give final orders as follows;

1. It is hereby declared that plaintiff is the owner of plot no. [...] in Isiolo.

2. An order of permanent injunction is hereby issued restraining the defendant by himself, or his agents from selling, entering or in any other way interfering with plaintiffs use and occupation of plot no. [...] in Isiolo.

3. Considering the relationship which once existed between the two litigants, i direct that each party bears their own costs of the suit.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 7th MARCH, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Gikunda holding brief for Rimita for plaintiff present

Defendant in person present

HON. LUCY. N. MBUGUA

ELC JUDGE