



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 298 OF 2017

KNIGHT MORAA OMWOYO.....PLAINTIFF

VERSUS

WILLIS ABWAO ADERO.....DEFENDANT

RULING

1. In the Application dated 11th July, 2017 the Plaintiff is seeking for the following orders:

a. That the OCPD Matungulu Division to supervise KBC Police Station implement and supervise compliance of this orders.

b. That costs of this Application be provided for.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that she is the Defendant's wife; that they separated in the year 2015 and that on 15th June, 2015, they entered into an agreement with the Defendant for the transfer of Plot Number Komarock B 1/462 KBC area into their joint names.

3. According to the Plaintiff, they agreed that the suit land shall be held in trust for their son, D O (*minor*) and his other siblings; that they jointly developed a residential home on the land and that she tried to persuade the Defendant to effect registration of the suit land in their joint names but that has been in vain.

4. It is the Plaintiff's evidence that she holds half share in the suit land and that she has made more contribution in the development of the suit land than the Defendant.

5. The Defendant filed a Notice of Preliminary Objection in which he averred that this court does not have the jurisdiction to entertain the matter; that the matter falls within the jurisdiction of a commercial or family division of the High Court and that the suit is incompetent and fatally defective.

6. In the Replying Affidavit, the Defendant deponed that he is the absolute registered proprietor of Plot No. 049 of L.R. No. Komarock B1/462; that he bought the suit land on 12th July, 2008 whereas he got married on 1st December, 2012 and that the Plaintiff did not contribute to the purchase of the said land.

7. The Defendant finally deponed that he single handedly developed the suit land and that he signed the agreement of 15th June, 2015 out of duress and coercion for the peace of the family.

8. According to the Defendant, the agreement was only valid as long as their marriage existed.
9. The advocate for both parties appeared before me and made short oral submissions.
10. The Plaintiff's advocate submitted that despite agreeing, the Defendant has declined to register the suit land in their joint names; that they were to hold the suit land in trust for their children and that the Application should be allowed.
11. The Defendant's advocate submitted that it is the Defendant who bought the land; that the land is not jointly owned; that the Plaintiff walked out of the marriage and that the agreement was only to remain in force during the existence of their marriage.
12. The ownership certificate in respect of Plot No. 049 of L.R. No. Komarock B1/462 shows that the same was registered in favour of the Defendant on 16th July, 2008. The certificate of marriage on the other hand shows that the Defendant was married to the Plaintiff on 1st December, 2012.
13. The Defendant has not denied that on 15th June, 2015, three (3) years after their marriage, he entered into an agreement with the Plaintiff.
14. According to the said agreement, both parties had made equal contribution towards the development of the suit land and that the two of them *"have on their own violation/free will, willingly and mutually agreed to enter into this agreement on how to treat the property known as Plot No. 049 whose Title Deed is being proposed."*
15. The agreement further provided that the investments on the plot will be owned jointly by both parties and that the Title Deed shall be issued in their joint names. The penultimate paragraph provided as follows:

"That in the event the marriage between Willis Abwao Adero and Knight Moraa Omwoyo is for whatever reasons dissolved, the property shall not be shared out but remain reserved and dedicated to the children whose biological children are Willis Abwao Adero and Knight Moraa Omwoyo and none else."
16. It is trite that courts cannot re-write a contract, and unless it is shown that the said contract was entered into by duress, mistake or misrepresentation, the terms of the said agreement are binding on the parties.
17. Indeed, the agreement foresaw the current situation that the parties have found themselves into, that is, of separating or divorcing.
18. Having agreed that the suit land be jointly registered in their favour, in trust for their biological children, the Defendant, until he proves that he entered into the agreement by duress or mistake, cannot run away from its terms.
19. Considering that the issue before the court is not about the division of matrimonial property but the enforcement of a contract in respect to land, I find and hold that the Plaintiff has established a prima facie case with chances of success.
20. I therefore allow the Application as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 2ND DAY OF MARCH, 2018.

O.A. ANGOTE

JUDGE