

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. APPEAL NO.10 OF 2015

GRACE MWITHI M. MAUNDUAPPELLANT

VERSUS

JAMES MUTISYA NGOVIRESPONDENT

(Being an appeal from the Ruling of N.D Nyandoro Principal Land Registrar Machakos issued and dated 23rd July, 2015 in Machakos Caution

Cause No. 4 of 2015)

JUDGMENT

1. This is an appeal in respect of the Ruling of N.D. Nyandoro, the Principal Land Registrar Machakos, in Machakos Caution Cause No. 4 of 2015. In the Memorandum of Appeal, the Appellant has averred that the Principal Land Registrar erred in law and fact by failing to accept and consider the documentary evidence that was adduced by the Appellant and that the Registrar considered extraneous matters in arriving at his Ruling. The Appellant is seeking for the setting aside of the Ruling of 23rd July, 2015. The Appeal proceeded by way of written submissions.
2. The Appellant's advocate submitted that the Registrar of Lands did not consider the documents on record when the matter came up for hearing; that the Respondent, who is the Appellant's father, has been disposing the family land to the detriment of the family and that the Appeal should be allowed.
3. The Respondent's advocate submitted that the Respondent has since died; that the Respondent sold some of his parcels of land for his upkeep and that despite being the only child who had been educated all the way to the University, the Appellant had been unable to take care of his elderly father, the Respondent.
4. The Appellant filed a caution on the Respondent's parcels of land known as Kangundo/Isinga/2430, 2431, 2432 and 2433 claiming beneficial interest as a daughter of the Respondent. However, upon hearing both parties, the Principal Registrar of Lands, Machakos, lifted the said cautions vide his Ruling of 23rd July, 2015. The Appellant was aggrieved by that Ruling and filed the current Appeal.
5. The Appellant is the Respondent's daughter. According to the Respondent, he educated the Appellant all the way to the University and even took care of her child while she was pursuing her education.
6. In his Ruling, the Registrar of Lands observed that the Respondent owned a "shylock" Kshs. 808,000 which he was required to refund. The Registrar of Lands further observed that the Respondent was elderly and in poor health and needed money for his own upkeep. On those grounds, he lifted the caution that had been lodged by the Appellant.
7. Indeed, Section 73 of the Land Registration Act allows the Registrar to lift a caution after hearing the cautioner and the registered proprietor of the suit land. That is what happened in the instant case.
8. Although the Appellant had registered the caution on the suit properties on the ground that she had a beneficial interest on the said land, the Respondent has not shown to this court the law granting her any beneficial or legal interest on land that was solely purchased by her father. Indeed, the only person who has a legal claim over the registered proprietor of land in a family is a spouse, whose consent is required before such a property can be sold and not the children.
9. The only occasion that a child can successfully bar his or her father from selling land registered in his name is if it shown that the father is holding the land in trust for the family. The concept of trust in a family set up only arises where the suit land is what can be categorized as ancestral land which was registered in favour of a family member on behalf of the rest of the family. That was not the Appellant's case.
10. Having not purchased the suit land, and the land not being ancestral land, the Respondent was at liberty to deal with the said land in any manner he deemed fit, with the consent of his spouse(s). The Appellant, who is an adult, did not have a beneficial or legal interest in the suit land during the life time of his father. The Registrar was therefore entitled to lift the caution that the Appellant had lodged against the suit land.
11. For those reasons, I find that the Appeal filed by the Appellant is unmeritorious. The Appeal is therefore dismissed with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 20TH DAY OF APRIL, 2018.

O.A. ANGOTE

JUDGE