



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
E.L.C CASE NO. 94 OF 2016
ELIZABETH CHEPNGENO RUTO.....PLAINTIFF
VERSUS
DAVID KIPLANGAT TONU.....DEFENDANT

JUDGMENT

Introduction

1. By a Plaint dated 7th December 2016 the Plaintiff filed suit against the defendant seeking an order that the Kericho District Surveyor visits land parcel number KERICHO/CHILCHILA BLOCK 3 KOKIMAKOLYOK/318 for the purpose of sub-dividing it equally between the plaintiff and the defendant.
2. In her Plaint the plaintiff states that in 1992 she purchased the suit property jointly with the defendant and had it registered in their joint names. She further pleads that they both cultivated it up to 2010 when the defendant became hostile to the plaintiff and stopped her from cultivating the suit property. She therefore wishes to have the suit property sub-divided so that each of them can have get a title deed for their share.
3. The defendant filed a Defence admitting that the suit property is jointly registered between him and the Plaintiff but denied that he has stopped her from cultivating the same.
4. When the case was set down for hearing the defendant and his advocate did not show up even though the hearing date had been taken by consent.
5. The Plaintiff testified and called two witnesses. In her testimony she stated that she had purchased the suit property jointly with the defendant with each of them contributing an equal amount. The same was then registered in their joint names as indicated in the certificate of official search which she produced as an exhibit. She further testified that she had cultivated the land together with the defendant upto 2010 when he became hostile to her and chased away her sons. She stated that the house she had built on the suit property was burnt down and the defendant has put his sons in occupation of the suit property. Her two witnesses who testified as PW2 and PW2 corroborated her testimony.

Issues for Determination

6. The main issues for determination are as follows:
 - i. Whether the plaintiff is a joint proprietor of all that parcel of land known as KERICHO/CHILCHILA BLOCK 3 KOKIMAKOLYOK/318

- ii. Whether the plaintiff is entitled to have half the suit property registered in her name
- iii. Who should bear the costs of this suit.

Analysis and Determination

7. The first issue for determination is whether the Plaintiff has a proprietary right to the suit land and the type of tenancy involved in this matter. The plaintiff's evidence which was unchallenged is that she purchased the suit property jointly with the defendant with each of them contributing an equal amount of money. The Plaintiff produced a certificate of official search as evidence of her claim to the suit land. The certificate of official search indicates that the suit land is registered in the names of the Plaintiff and the defendant as joint proprietors.

8. Section 91 (1) of the Land Registration Act provides as follows:

'in this Act, co-tenancy means the ownership of land by two or more persons and includes joint tenancy and tenancy in common.'

9. Section 91 (2) provides that except as otherwise provided in any written law, where the instrument of transfer of an interest of land to two or more persons does not specify the nature of their rights, there shall be a presumption that they hold the interest as tenants in common in equal shares.

10. With regard to the second issue, it is clear from the plaintiff's evidence that the defendant has become hostile to her and prevented her from using her share of the suit property without any lawful cause. In the circumstances it is only fair and just that the property be partitioned so that each party gets their rightful share.

11. Accordingly, I find and hold that the plaintiff has proved her case on a balance of probabilities and I direct as follows:

- a. A declaration that the Plaintiff is entitled to half share comprised in land parcel number KERICHO/CHILCHILA BLOCK 3 KOKWET IMAKOLYOK/318 jointly registered between the Plaintiff and the Defendant
- b. That the District Surveyor Kericho shall visit land parcel number KERICHO/CHILCHILA BLOCK 3 KOKWET IMAKOLYOK/318 for the purpose of sub-dividing it equally between the plaintiff and the defendant.
- c. That in order to facilitate the sub-division the Defendant shall sign the mutation forms and transfer forms respectively within 60 days failing which the Deputy Registrar of this Honourable court is hereby authorized to sign the same.
- d. That the Officer Commanding Station (OCS) Fort Ternan Police Station shall enforce compliance and provide security during the said exercise
- e. The costs of the survey shall be shared equally by the plaintiff and the defendant but in the event that the defendant is uncooperative, the plaintiff shall pay and recover the same from the defendant
- f. The costs of this suit shall be borne by the defendant.

Dated, signed and delivered at Kericho this 17th day of April 2018

J.M ONYANGO

JUDGE

In the presence of :

Joseph Tanui (Plaintiff's son)

Court Assistant: Rotich