



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

E.L.C CASE NO. 5 OF 2014

TAPSABEI SIGEI KORIR.....PLAINTIFF

VERSUS

JUDY CHEPKORIR KOECH.....DEFENDANT

JUDGMENT

Introduction

1. The plaintiff filed suit against the defendant seeking the following reliefs;

- a) A declaration that the defendant has no claim over either land parcel number KERICHO/SILIBWET /93 or KERICHO/SILIBWET/1231.
- b) An order that the defendant vacates land parcel number KERICHO/SILIBWET /93.
- c) An order that the defendant removes the cautions registered against land parcels number KERICHO/SILIBWET/93 and KERICHO/SILIBWET/1231.
- d) Costs of this suit

2. The defendant filed a defence in which she pleads the she is entitled to the suit property by virtue of the fact that she was married to the defendant's late son.

3. When the case came up for hearing the plaintiff testified that she is the registered proprietor of the suit parcels of land. She produced the certificates of official search as exhibits. She then relied on her statement filed in court on the 12th February 2014. In the said statement she states that the defendant co-habited with her late son Wilson Orwasa in 1989. She states that even though she has 5 children none of them was sired by the deceased. She further states that the defendant abandoned the deceased when he was critically ill and only returned long after he had died and she has been residing on one of the suit properties with one Richard Ngetich.

4. The Plaintiff called one witness Joseph Cheruiyot Koech who testified as PW2. He testified that the defendant was a friend to his late brother Wilson Orwasa who was married to one Rachel Orwasa. He stated that the brother died in 1998 and before his death he had been co-habiting with the defendant for 9 years. He testified that the defendant left when the deceased was very sick and returned in 2012 after his death. He confirmed that the plaintiff had placed a caution on the suit properties and was staying on parcel no. KERICHO/SILIBWET/93 with her son.

5. On cross-examination, he denied that the plaintiff was married to the deceased. He said he did not know whether the deceased paid dowry to the plaintiff's parents. He said the defendant was staying on the suit property with one Richard Ngetich with whom she has children. He stated that he was not sure if the defendant had any children with his late brother but added that he did not recognize any of the defendant's children as belonging to his late brother. He also admitted that he was not present when she got married.

6. The Defendant testified that she was married to the plaintiff's son and they were blessed with three daughters and a son. The first child was born in 1987. She testified that they stayed on land parcel no. Kericho/Silibwet/ 93 which is registered in the Plaintiff's name. She admitted that she left in 1998 when her late husband was sick as her brother-in law became hostile to them and demolished her house. Her late husband then went to stay with the plaintiff. She admitted that she did not attend her late husband's burial as she had been sent away by her brother in-law. She denied that she was married to Richard Ngetich as she testified that he was her cousin. She also denied that her late husband was married to a lady called Rachel as she never found him with her.

7. The Defendant called Francis Rono as DW2 who is her neighbour. He testified that the Defendant was married to the late Orwasa Koech

in 1986 and her late husband paid 4 heads of cattle as dowry. He testified that in 2012, the defendant had reported to the chief that she had been chased away from her matrimonial home by her brother-in-law. The chief then called the defendant and the said brother-in-law to a meeting where it was resolved that she should go back to her home. DW 2 denied that the defendant was married to Richard Ngetich as it was against Kipsigis customs for a woman who had not been divorced to be married by another man. He also testified that it was against Kipsigis customs for a widow who had not been divorced to be sent away from her matrimonial home.

Issues for Determination

8. After considering the pleadings and evidence on record, the following issues emerge for determination:

- i. Whether the Plaintiff is the absolute proprietor of land parcels number KERICHO/SILIBWET/93 and KERICHO/SILIBWET/1231.
- ii. Whether the defendant is entitled to the suit property by virtue of her marriage to the plaintiff's late son.
- iii. Whether the defendant should vacate the land parcel number KERICHO/SILIBWET/93/.
- iv. Whether the defendant should remove the cautions she placed on land parcels number KERICHO/SILIBWET/93 and KERICHO/SILIBWET/1231.

Analysis and Determination

9. In her submissions, counsel for the Plaintiff has stated that the defendant has no right to the suit property as the two parcels of land are registered in the name of the plaintiff. Even though her late husband was allowed to establish his home on the said land, he did not own it as it remained the property of the plaintiff.

10. Section 24 of the Land Registration Act No 3 of 2012 provides as follows:

“The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

11. Section 25 (1) of the said Act further provides that the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of the court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject to any lawful encumbrances, set out in this section.

12. Section 26 of the same Act provides that the certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as *prima facie* evidence that the person named as proprietor of the land is the absolute indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except

- a) on grounds of fraud, or misrepresentation to which to which the person is proved to be a party; or
- b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

13. From the evidence on record, it is common ground that the plaintiff is the registered proprietor of the suit property. It is therefore my finding the plaintiff is the absolute proprietor of the suit property and the same is free from any claims or restrictions whatsoever.

14. With regard to the second issue, the defendant claims that she is entitled to the suit property by virtue of her marriage to the plaintiff's late son. A son's right to his parent's property is not automatic.

15. In the case of **M.M.G V J.G & Another (2018) eKLR** the court citing the case of **Nahashon Kerenge V Justus Tiru Zakayo Civil Appeal No. 222 of 1990** stated as follows:

“There is no vested right to inheritance during the lifetime of parents. Let it be known that during the lifetime of their parents, and subject to the beneficial and occupational rights, a child cannot force parents to sub-divide and distribute their land or assets unless the said land and assets were acquired and held in trust prior to the parent's acquisition of title to the same”

16. In the case of **Marigi V Muriuki & 2 Others Civil Case No 189 of 1996 (2008) 1KLR 1073** The court held as follows:

“The law recognizes the rights of children over their father's estate. These rights are inchoate and accrue upon the death of the father.”

17. Similarly, in the instant suit, the rights of the defendant whose claim is based on her marriage to the plaintiff's late son, can only accrue upon the death of the plaintiff. She can therefore not acquire or use the suit property contrary to the plaintiff's wishes. The caution that she placed on the suit property ought to be removed.

18. It is unfortunate that the defendant has fallen out with her mother-in-law after her husband's death and it is clear from the pleadings and testimony that the plaintiff wants nothing to do with her. Even though I sympathize with the defendant, I cannot order that she continues staying on the suit property contrary to the express wishes of the plaintiff who is the absolute and indefeasible owner of the suit property.

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

- a. That the defendant has no claim over either land parcel number KERICHO/SILIBWET /93 or KERICHO/SILIBWET/1231.
- b. That the defendant vacates land parcel number KERICHO/SILIBWET /93 within the next three months
- c. That the defendant removes the cautions registered against land parcels number KERICHO/SILIBWET /93 and KERICHO/SILIBWET/1231

20. Since this is a dispute pitting a mother-in-law against her daughter-in-law, each party shall bear their own costs.

Dated, signed and delivered this 6th day of April, 2018.

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J.M ONYANGO

JUDGE

In the presence of:

1. Miss Ngetich for the Plaintiff
2. Defendant present in person
3. Court assistant - Rotich