



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 751 OF 2012 (MULTI-TRACK)

M W G.....PLAINTIFFS

=VERSUS=

G E M.....DEFENDANT

JUDGEMENT

1. The Plaintiff filed this suit against the defendant claiming the following reliefs:-

- a) A declaration that the suit premises plot No.[.....] Utawala Embakasi rightfully and lawfully belong to the plaintiff.*
- b) A permanent injunction restraining the defendant, his agents, or servants from interfering, alienating, erecting structures, or remaining and/or in any way interfering with the plaintiff's quiet enjoyment of the suit premises Plot No. No. [.....] Utawala Embakasi.*
- c) An order compelling the defendant to put the plaintiff into quiet, exclusive, and peaceful possession of the premises the suit premises , Plot No. No.[.....] Utawala Embakasi.*
- d) General damages for loss of use of the premises.*
- e) Costs of the suit plus interest on (d) and (e) at court's rate.*

2. The defendant filed a defence and counter-claim in which he claims the following reliefs:-

- a. A declaration that the suit premises Plot No. No.[.....] Utawala Embakasi solely and legally belongs to the defendant.*
- b. A declaration that the defendant is entitled to half (1/2) share of properties more particularly motor vehicle No.KBB [.....] and other proceeds of that business known as [Particulars Withheld] STORES and proper account and audit to be done from 6th January 2012 to date to determine the amounts entitled to the defendant.*
- c. Costs of the suit plus interest on (b) above*
- d. Any other relief the honourable court may deem fit to grant.*

3. At the hearing of this suit, the defendant who had been duly served did not attend court. The hearing therefore proceeded in his absence. The plaintiff took the witness box and adopted her statement recorded on 25th October 2012. She also relied on documents which she had filed.

4. The plaintiff states that in September 2007, she was informed that there were plots being sold at Utawala area of Embakasi in Nairobi. She approached the vendors who offered to sale to her plot No. [.....] at Kshs.100,000/=. She bargained and the vendors agreed to sale it to her at Kshs.95,000/=. She asked the defendant to accompany her to the offices of the vendor. The plaintiff had been cohabiting with the defendant and were living as husband and wife. She paid Kshs.95,000 in cash . The money had been obtained through a loan. She asked the vendor to include the defendant's name in the certificate of ownership.

5. The plaintiff later took another loan and started putting up a house for her to stay with the defendant and their children. She struggled to build the house because of lack of finances. The house was finally completed and the two moved in with their children. In January 2012, the

defendant unlawfully and without any cause evicted her and the children from the house.

6. The plaintiff went and filed a case against the defendant in the children's court. The defendant was ordered to pay monthly maintenance to the children but he has never complied. The plaintiff demanded that he defendant vacates the house but he declined. This is what forced her to file this case.

7. I have gone through the documents filed by the plaintiff herein. There is no doubt that the plaintiff secured a loan of Kshs.100,000/= from Equity Bank Ltd in September 2007. There is a letter of offer which she duly accepted. There is also a bank statement from Equity Bank Ltd showing that the Kshs.100,000/= loan was credited into her account. A sale agreement shows that on 5.10.2007 the plaintiff and the defendant purchased plot No. [.....] . The two were issued with a certificate of ownership by Omega Commercial Services Ltd who were the vendors of the plot. The certificate was issued on 5.10.2007.

8. The plaintiff has also exhibited statements showing that she took subsequent loans. She has also exhibited various receipts for various building materials purchased. The defendant also filed documents in support of his claim. Among the documents filed is a withdrawal slip from Jamii Bora bank in which he withdrew, Kshs.58,350/= on 5.10.2007. This is the same day on which the two sealed the deal in which the property in issue was shown to have been jointly purchased.

9. What is not in doubt is that both the plaintiff and the defendant were cohabiting with effect from 1997. The cohabitation resulted in two issues namely A W G born in 1994 and I M born on 1st July 2000. When the plaintiff sued the defendant in the Children's Court in 2012, one of the prayers was that she wanted an order from the court allowing her access to the matrimonial home with the children. This is also one of the prayers in this suit.

10. The defendant contends in his pleadings that he was married to the plaintiff. The plaintiff on the other hand seems to suggest that she was merely cohabiting with the defendant. This court has no jurisdiction to determine whether the two were married or not. That issue can only be dealt with by the Family Division of the High Court. The defendant in his counter-claim is seeking division of matrimonial property. This is still within the jurisdiction of the family court.

11. The plaintiff is seeking a declaration that she is the rightful and lawful owner of the suit property. The ownership documents show that they both own the property. I cannot give any declaration to that effect as that can only be issued after evidence is adduced before a court of competent jurisdiction to determine the contribution of each of the parties herein. I can also not issue any injunctive orders as the issue of the status of the two parties is yet to be determined by a competent court.

12. The plaintiff had been allowed to access the matrimonial home in a ruling delivered on 14th November 2013. If the plaintiff was never allowed into the matrimonial home pursuant to that ruling, I will allow prayer (c) of the plaint as the plaintiff considers filing a suit in a proper court to deal with family issues. The plaintiff has only succeeded in one prayer. I will therefore grant her one quarter of the costs of this suit.

Dated, Signed and delivered at Nairobi on this 28th day of May 2018.

E.O.OBAGA

JUDGE

In the absence of:-

Mr Bosire for M/s Maitai

Court Assistant: Hilda

E.O.OBAGA

JUDGE