



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC NO 54 OF 2015

MOFFAT GICHURU.....PLAINTIFF

VERSUS

M'IMANYARA M'MURITHI.....1ST DEFENDANT

WILSON MWIRIGI MANYARA.....2ND DEFENDANT

KEVIN BUNDI GICHURU.....3RD DEFENDANT

JUDGMENT

Introduction

1. 1st defendant is father to plaintiff and 2nd defendant. He is also a grandfather to 3rd defendant. The land in dispute (suit land) is L.R No. Abogeta/Upper Kithangari/2514 which is registered in the name of 1st defendant.
2. The brief history of the dispute is that before 1997, the suit land formed part of L.R No. Abogeta. Kithangari/4 (6.99 hectares) registered in the name of one Nkanata M'Murithi who was an elder brother to 1st defendant. In 1997, Nkanata M'Murithi transferred this land to his son Jamlick Murithi Murumia.
3. 1st defendant was claiming that this was family land of which he was entitled to half a share. He therefore filed Meru. H.C.C.C No. 89 of 2001 against Jamlick and his father (Nkanata). 1st defendant lost the case and he lodged an appeal in Nyeri, the same being civil appeal No. 151 of 2007.
4. The appeal was allowed and the court ordered Jamlick to transfer half share of L.R No. Abogeta/Upper Kithangari/4 to 1st defendant. By then, Jamlick's father had passed on.
5. It is out of this Court of Appeal decision that the parcel No. Abogeta/Kithangari/4 was divided into two, giving rise to parcel No. Abogeta/U- Kithangari/2514 now registered in name of 1st defendant and Abogeta/U – Kithangari/2513 registered in name of Jamlick Muriithi Murumia.
6. Plaintiff filed this case claiming that he is now entitled to the entire portion of the suit land Abogeta/U-Kithangari/2514 because all along, his father was claiming for the suit land on his (plaintiff's) behalf.

Plaintiff's case

7. Plaintiff has pleaded that he was invited to live on the suit land by his uncle (Nkanata M'Murithi) in 1975 and he started to utilize half of that land (3.233 hectares). However, in 1997 Nkanata transferred the entire parcel of land No. Abogeta/Upper Kithangari/4 to his son Jamlick Murumia and hence plaintiff sought for advice from his father, the 1st defendant. The 1st defendant apparently advised plaintiff that **“for the demand to be easy the plaintiff do allow the 1st defendant to sue demanding the half share of the land, claiming it to be family land and then hold it in trust for the plaintiff”**.
8. Plaintiff avers that he provided the financial support for his father to pursue the claim of half share of Abogeta/Kithangari/4 until they succeeded and 1st defendant became the registered owner of the land Abogeta/U-Kithangari/2514.
9. In his statement dated 3.3.17, plaintiff has stated that he is the one who has always occupied the suit land, that the land initially belonged to his uncle Nkanata who had been allocated the same by the government in 1959 and that the suit land was never family land.

10. Plaintiff called two witnesses namely PW 2 Jamlick Muriithi Murumia (his cousin who is son of Nkanata) and PW3, a neighbor known as Wilfred Mwirigi.

11. Jamlick testified that indeed it is his father who gave the plaintiff the suit land and that even when Jamlick's father transferred the land to him (Jamlick), he was told to ensure that he transfers a portion of the land to the plaintiff. Jamlick also stated that the land is not family land.

12. PW 3, he stated that for the longest time he had known plaintiff, the latter had always lived on the suit land.

13. All these 3 witnesses on plaintiff's side averred that defendants have never occupied the suit land.

14. In support of his case, plaintiff produced the following documents as exhibits;

(i) Search for land parcel No. Abogeta/U – Kithangari/2514 showing that the land is in the name of M'Imanyara M'Murithi,

(a) Judgment in Civil Appeal case No. 151/2007.

15. Plaintiffs claim is for an order for the 1st defendant to transfer the whole parcel of land Abogeta/U- Kithangari/2514 to the plaintiff or in alternative, the Honourable court to order for the rectification of the register to read the name of the plaintiff instead of the 1st defendant. Plaintiff also prays for a permanent injunction against the 2nd & 3rd defendant from entering and interfering in the suit land occupied by the plaintiff.

Defence case

16. Defendants have pleaded that originally, parcel No. Abogeta/ U- Kithangari/4 was family land which was owned by 1st defendant's father one M'Murithi Murathi, who had passed on this land to 1st defendant's brother, Nkanata M'Murithi as a trustee. Defendants claim that in breach of trust, Nkanata had passed on this land to his son, Jamlick Muriithi Murumia. The latter failed to transfer the half share of this land to 1st defendant, hence the litigation in the high court and court of appeal which eventually declared the land to be family land.

17. Defendants have further pleaded that plaintiff is now conspiring with Jamlick Muriithi to grab the suit land from 1st defendant.

18. 1st defendant testified as DW 1 while his son, 2nd defendant testified as DW 2. DW 1 gave an account of how he sued his brother's son Jamlick Muriithi vide Meru HCC No. 89 of 2001 claiming half of the land Abogeta/ U-Kithangari/4 measuring ,where he lost the case. However, in the court of appeal case No. 151/2007, an order was given for the subdivision of this parcel of land resulting in parcel No. Abogeta/U-Kithangari/2513 and 2514, whereby 1st defendant was issued with a title deed for parcel 2514.

19. 1st defendant avers that he is the one who had allowed plaintiff to utilize part of the suit land. He also states that he has 8 children in total, (6 sons and 2 daughters) whom he desires to share out the suit land to. 1st defendant avers that due to his advanced age, he is not able to cultivate the land. That is why he has allowed 2nd defendant and 3rd defendant (a son and grandson respectively) to use part of the land too. Both DW 1 & 2 aver that it has become difficult for them to utilize the land because of the hostility they face from the plaintiff.

20. 2nd defendant avers that he has developed part of the land by installing piped water and planting crops. However whenever he plants, plaintiff destroys his crops resulting in plaintiff being charged with various criminal cases in Nkubu Law court.

21. In support of their case, defendants relied on the following documents

(i) Proceedings in Meru HCC No. 89 of 2001 (which document was not very helpful as it was not legible).

(ii) Judgment in court of appeal case NO. 151 of 2007.

(iii) Copy of letter of consent of land control board for subdivision of parcel No. Abogeta/U-Kithangari/4.

(iv) Mutation form.

(v) An assessment report by agricultural officer.

(vi) Certificate of official search for parcel NO. Abogeta/U-Kithangari/2514 showing that this land is registered in the name of 1st defendant.

Determination

22. I have considered all the issues raised herein as well as the submissions of the parties. I find that the litigation in the H.C.C case no. 89 of 2001 and court of appeal case no. 151 of 2007 which culminated in the subdivision of parcel no Abogeta/U-Kithangari/4 into two resultant parcels whereby, 1st defendant became the registered owner of parcel Abogeta/U-Kithangari/2514 is not disputed.

23. The issue for determination is whether 1st defendant is holding the suit land in trust for the plaintiff.

24. Plaintiff's argument is that there was an agreement between him and his father, to the effect that after the aforementioned litigation, the suit land would revert to plaintiff. This is because all along, it is plaintiff who was apparently entitled to this land, having been given the same by his uncle (Nkanata) and having occupied this land throughout his life time.

25. I have read the court of appeal judgment in case no 151 of 2007 where in reference to the dispute, the court held that **“The land remained ancestral before and after Mau-Mau uprising..... In that case, the 1st respondent (Nkanata) was registered in trust of other members of the family and it would appear that the quick transfer of the suit land from 1st respondent to 2nd respondent (Jamlick) was intended to put the land out of reach of the appellant (1st defendants)”**.

26. The plaintiff was aware of the findings of the Court of Appeal but he still insists that the land is not family land.

27. In his pleadings, plaintiff has claimed that his father had told him that it was not easy for him to get the land based on his (plaintiff's) arguments that the land ought to be his. With the court of appeal decision, I can only state that plaintiff's arguments are even more difficult to achieve simply because accepting plaintiff's arguments would in essence amount to disregard or overturning the court of appeal decision.

28. It matters not what kind of arrangement plaintiff had with his father. The fact remains that even if there was such an agreement between the two to the effect that 1st defendant would transfer the land to plaintiff after the court of appeal case (which agreement is nonexistent), still such an agreement would not be enforceable through the current suit.

29. I must comment on the issue of plaintiff's occupation of the suit land.

30. It is indeed not disputed that this is where plaintiff calls home. Other members of the family appear to be residing elsewhere. However it has emerged that it is plaintiff's hostility which does not allow other family members to utilize the land. The destruction caused on 2nd defendants' crops by plaintiff is a testimony of this hostility.

31. As rightly submitted by defence, plaintiff has no basis of claiming the land when his father is alive, see- **Muriuki Marugi vs Richard Magiri Muriuki & others (C. A NO. 89 of 1996 Nyeri)**.

32. This is a case of unmitigated greed and utter selfishness on the part of the plaintiff. It is not lost to this court that 1st defendant is a very old and sickly man (as per courts observation during his testimony). His son DW 2 stated that the father was 90 years in 2017. It is not fathomable to this court that plaintiff would trash a court of appeal decision, then drag his own aging father to court and also disregard the fact that he has other 7 siblings.

33. Pursuant to provisions of section 24 of the land registration act; **“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”**.

34. 1st defendant is recognized by this court as the absolute owner of the suit land. He is free to share out this land to his children and defendants and even plaintiff (if he so wishes) without interference from the plaintiff.

35. My conclusion is that plaintiff's claim is totally an acceptable and the same must fail. I proceed to give final orders as follows:

(i) Plaintiff's suit is hereby dismissed.

(ii) Any orders injunction/inhibition that may be in force are hereby discharged.

(iii) As to costs, plaintiff has not found favour before this court even if this is a family dispute. Plaintiff is hence condemned to pay costs of the suit.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 9th MAY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

HON. LUCY. N. MBUGUA

ELC JUDGE