



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

E.L.C NO 10 OF 2010

ZIPPORAH CIARURU MUKUIRU.....PLAINTIFF

VS

STEPHEN KUNGUTIA BAIMUTI.....1ST DEFENDANT

THE DISTRICT LAND ADJUDICATION

OFFICER.....2ND DEFENDANT

THE HON. ATTORNEY GENERAL.....3RD DEFENDANT

JUDGMENT

1. By an amended Plaint filed on 16/7/10 the Plaintiff sued the Defendants seeking the following orders;

- a) A declaration that land parcel No. 2776 Antuamburi Adjudication Section is the property of the Plaintiff.
- b) An order that the 2nd Defendant's records on parcel No. 2776 be cancelled and the Adjudication Registrar altered to reflect that the Plaintiff is the sole proprietor of the suit land.
- c) Costs of the suit and interest.
- d) Any further or better relief this Honourable Court may deem fit to grant.

2. The Plaintiff states that at all material times she is the lawful owner of the suit land which is her ancestral land. That the suit land was held by her brother one Joseph Mwimbi Mukuiru in trust and upon her brother's demise his wife Acheke Mwimbi and the 1st Defendant unlawfully and fraudulently obtained the said land and transferred it to the 1st Defendant.

3. She avers that she filed an objection during the adjudication process but the 1st Defendant unlawfully and fraudulently colluded with the 2nd Defendant who ordered that the land be kept by the 1st Defendant. That the actions of the 1st and 2nd Defendant in were in collusion with the said Acheke Mwimbi and amount to fraud and illegality. She has pleaded and itemized the instances of fraud on the part of 1st and 2nd Defendant.

4. Further she states that she has extensively developed the suit land.

5. The 1st Defendant denied the Plaintiff's claim through a defence filed in Court on 21.7.2010. He denied the particulars of fraud and stated that he bought the land in 1993 from the Plaintiff's brother one Joseph Mwimbi Gacheke who died before transferring the suit land to him. That the land was transferred to him by the vendor's wife Gacheke Mwimbi.

6. At the hearing of the case the Plaintiff testified that the suit land is family land. That it belonged to her father and was held by her brother Joseph Mwimbi in trust for her. That her brother gave her 3 acres of the said land while he was alive. That the land is adjacent to her matrimonial home where she has 2 acres, making the total acreage to be 5.

7. Further she stated that upon her brother's death Joanina Gacheke refused to transfer the 3 acres to her and instead sold it to the 1st Defendant. She states that she lives on the suit land and cultivates subsistence crops since 1999.

8. She gave the history of disputes and the steps taken to resolve the disputes between her and her brother's wife over the suit land. That the said Joanina Gacheke dishonoured the agreement arbitrated by the clan elders as per Kimeru Customs. The case was referred to the Chief but could not agree. She filed an objection before the adjudication committee which was decided in favour of the 1st Defendant.

9. PW 2- Peter Muchiri Gathu gave evidence that he is a neighbour to the Plaintiff. That he is aware that the Plaintiff was given 3 acres by her later brother. However, on cross-examination he stated that he was not present when the land was given nor did he know that the 1st Defendant acquired ownership of the suit land. He confirmed that the Plaintiff cultivates 2 acres of the land while the 1st Defendant occupies and cultivates 3 acres. That at the request of the Plaintiff he fenced the land.

10. PW 3 – Diamamo Murugu M'imathiu Stated that he was one of the elders that determined the dispute. That they tried to reconcile the Plaintiff and her sister in law in vain.

11. The 1st Defendant led evidence that the suit land originally measured 5 acres and belonged to Joseph Mwimbi. That the late Mwimbi had bought the land from Kubai M'Ilungi. That on 3/3/97 he bought 3 acres from the said Mwimbi at the price of Kshs. 270,000/= and paid 200,000/= whereupon he was given possession. That the said Mwimbi died before the transaction was completed and the balance of Kshs. 70,000/= was paid to his wife Joanina Gacheke who transferred the land to him.

12. He further stated that he is in occupation of the suit land since 1998 where he has done developments. That the Plaintiff filed an objection against him at Tigania Land Adjudication office which was determined in his favour. He produced a copy of agreement of sale in respect to the suit land to support his case.

13. DW 2 – John Njagi adduced evidence that the Plaintiff is his younger sister. He reiterated the evidence given by DW 1 and stated that the suit land is not family land. That their family land is situated at Akaia Adjudication section. That the suit land was bought by his brother Joseph from Kubai M'Ilungi. That he witnessed the agreement between the 1st Defendant and his brother over the suit land. That he was given 4 acres from the family land while the Plaintiff got 0.5 acres. That out of the land that Mwimbi bought he gave 2 acres to the Plaintiff and sold 3 acres to the 1st Defendant.

14. DW 3 – Joanina Gacheke gave evidence in support of the DW 2 and similar to that of DW 2.

15. Both parties have filed written submissions which I have carefully considered.

16. Having considered the pleadings, the evidence adduced and the submissions of the parties the key issue for determination is whether this Court has jurisdiction to determine this matter.

17. Both the Land Consolidation Act and Land Adjudication Act provide for an elaborate procedure of dispute resolution in respect to the ascertainment of rights and interests of land in both legal regimes.

18. It is on record that the dispute in respect to the suit land was heard and determined by the Adjudication committee which rendered a decision in favour of the 1st Defendant. The dispute was filed under section 26 of the Land Consolidation Act Cap 283. The preamble of the Act states that it is an act of Parliament to provide for the ascertainment of rights and interests in, and for the consolidation of, land in the special areas; for the registration of title to, and of transactions and devolutions affecting, such land and other land in the special areas; and for purposes connected and incidental thereto.

19. The Act has an elaborate mechanism for the resolution of disputes arising from adjudication of land thereto. The spirit of the Act is that disputes must come to an end and that explains why parliament decreed that the decision of the committee and Adjudication Officer is final. The minister or any person to whom compensation has been awarded may apply to a Subordinate Court for review.

20. In the Cap 284 an aggrieved party would appeal to the minister under section 26 of the said Act.

21. It was then left for the Plaintiff to file a Judicial Review to quash the decision of the District Land Adjudication and Settlement Officer if she was aggrieved by the decision of the committee but she did not. The role of the Court is to determine rights and interests in land that has been adjudicated as well as to oversee the process of the adjudication.

22. I hold and find that this Court does not have jurisdiction to entertain the suit. In any event the Plaintiff has not complied with section 30 of the Land Consolidation Act which requires that consent of the Land Adjudication Officer is sought and obtained before filing the suit. It is not necessary to deal with other issues raised in the suit.

23. In the circumstance the suit is struck off with costs to the 1st Defendant.

DELIVERED, DATED AND SIGNED AT MERU THIS 28TH DAY OF JUNE 2018

J G KEMEI

JUDGE

In the presence of:

C/A Mutua

Muchiri for Plaintiff

Kiogora holding brief for Ms. Nelima for 1st Defendant

Kiongo for 2nd and 3rd Respondents