



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MOMBASA

ELC NO. 60 OF 2014

W A H.....PLAINTIFF

VERSUS

1. J W M H

2. E K M.....DEFENDANTS

JUDGMENT

1. The Plaintiff has filed this suit against the Defendants jointly and severally seeking;

a) A declaration that the 1st Defendant ownership of this suit property is subject to the Plaintiff's unregistered interest in the suit property and further declaration that the transfer of the property by the 1st Defendant to the 2nd Defendant was fraudulent, wrongful and/or null and void and the property be reversed to the 1st Defendant.

b) A prohibitory order prohibiting the Defendants either acting by themselves, or their agents, servants and/or employees in any manner whatsoever from selling, transferring, charging or in any manner howsoever interfering with the suit property to wit plot No. Kiegoi/Kinyanka/[...].

c) Costs of the suit.

d) Interests in (a) and (b) above at court rates.

2. The Defendants who were duly served with copies of plaint and summons to enter appearance neglected to enter appearance and/or file defence within the stipulated period. The court after it was satisfied that they had been served directed that the matter proceeds exparte.

3. It is the Plaintiff's case that he got married to the 1st Defendant Defendant J W M H on 7th April 2004. The 2nd Defendant, E K M is the sister of the 1st Defendant.

The Plaintiff told the court that he bought parcel number Kiegoi/Kinyanka/[...] from one David Nyaga Jesse situated in Maua. The property was registered in the 1st Defendant's name as the Plaintiff was not a resident in Kenya.

4. The marriage between the Plaintiff and the 1st Defendant broke down and the Plaintiff filed for divorce in 2011. In order to defeat the Plaintiff's claim on the land, she transferred the suit land to the 2nd defendant. It is the Plaintiff's case that this was fraudulent and illegal.

5. The particulars of illegality and/or fraud on the part of the Defendants is given in paragraph 11 of the plaint as follows;

a) Colluding to register the property in the 2nd Defendant's name.

b) Colluding to defeat the Plaintiff's claim and/or entitlement in the suit property.

c) Failing to disclose and/or inform the Plaintiff of their intention.

d) Purporting to be the registered owner of the property and thus transferring land to the 2nd Defendant.

6. In support of his case, the Plaintiff produced the following documents as exhibits;

- i) **A copy of the marriage certificate exhibit P1.**
- ii) **A copy of transfer dated 13th December, 2005 exhibit P2.**
- iii) **A copy of the Title deed exhibit P3.**
- iv) **A copy of the power of Attorney exhibit P4.**
- v) **A copy of the transfer form dated 8th March 2012 exhibit P5.**

7. I find that the Plaintiff's case is uncontroverted. There is no doubt that the suit property is matrimonial property. I also Notice that the transfer to the 2nd Defendant by the 1st Defendant was effected on 8th March, 2012 after the Plaintiff had filed the petition for divorce in the High Court.

I believe the Plaintiff when he says this was done to defeat his claim on the suit property. The transfer was effected without his consent and/or knowledge. The suit property was acquired during the subsistence of the marriage.

8. I find that the transfer of the suit property to the 2nd Defendant was unlawful and fraudulent.

9. I find that the Plaintiff has proved his case against the Defendants on a balance of probabilities.

I enter judgement on his favour as against the Defendants jointly and severally as follows;

- a) **That a declaration be and is hereby issued that the 1st Defendants ownership of Land Parcel Kiegoi/Kinyanka/[...] is subject to the Plaintiffs unregistered interests in the suit property.**
- b) **That a declaration be and is hereby issued that the transfer of the suit property being Kiegoi/Kinyanka/[...] by the 1st Defendants to the 2nd Defendant was fraudulent , wrongful and/or null and void and the suit property be reversed to the 1st Defendant.**
- c) **The title deed issued to E K M, the 2nd Defendant be cancelled.**
- d) **An order of prohibition do hereby issued to prohibit the Defendants either acting by themselves or their agents, servants and/or employees in any manner whatsoever from selling, transferring, charging or in any manner interfering with the suit property known as Kiegoi/Kinyamna /[...].**
- e) **Costs of the suit and interest.**

It is so ordered.

DATED and SIGNED at MOMBASA on the 19th day of June 2018.

L. KOMINGOI

JUDGE

DATED, SIGNED and DELIVERED at MOMBASA on the 19th day of June 2018.

A. OMOLLO

JUDGE