

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC 218 OF 2004

ATHUMMAN JUMA MWAKUANDIKA.....PLAINTIFF

-VS-

1. MARTHA WANGU MURIITHI

2. ELIJAH WAICHANGURU MURIITHI.....DEFENDANTS

RULING

1. This matter came up for defence hearing on 17th April 2018 when the 1st defendant testified as DW1. The witness stated that she was relying, among other documents, on a handwritten Agreement for sale dated 26th October 1973 and therefore wanted to produce the said Agreement as an exhibit. An objection was taken by the Plaintiff's Counsel, Mr. Ndege, to the production of the said Agreement, a copy of which was attached to the Defendants' List of Documents filed on 4th July 2014. The objection is based on the fact that the said document was not stamped as required by the provisions of Section 19 of the Stamp Duty Act Cap 480 Laws of Kenya and therefore was not admissible in evidence. Counsel for the Defendants Ms. Mango did not respond to the objection raised.

2. I have considered the objection. Section 19 of the Stamp Duty Act provides *inter alia* that:

“(1)no instrument chargeable with stamp duty shall be received in evidence in any proceedings whatsoever, except-

a) in criminal proceedings; and

b) in civil proceedings by a collector to recover stamp duty,

unless it is stamped.”

Section 4 of the Registration of Documents Act Cap 285 provides *inter alia* that all documents conferring or purporting to confer, any right, title or interest in or over immovable property shall be registered.

3. I have perused the Agreement dated 26th October 1973. The same is not stamped. It is clear that the same does not comply with the provisions of the

4. Stamp Duty Act. I find that the objection raised by the Plaintiff's Counsel is merited. The same is allowed and sustained. The Court declines to admit the said Agreement as evidence in the suit. It is so ordered.

Ruling dated, signed and delivered at Mombasa this 18th day of July 2018.

C. YANO

JUDGE