



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO. 141 OF 2015

CHARLES KATANA BINNS

GEORGE NYANJE BINNS.....PLAINTIFFS

-VS-

CHRISTINE NTHEMBA BINNS.....DEFENDANT

JUDGMENT

1. The Plaintiffs, Charles Katana Binns and George Nyanje Binns instituted this Suit by way of a Complaint dated 29th June 2015 and filed on the same date. The Plaintiffs are seeking judgment against the Defendant for a Permanent Injunction restraining the Defendant whether by herself, relatives, servants, employees and/or agents working under her or otherwise whosoever from alienating, disposing, wasting and/or in any manner interfering with **Land Reference No.315/1/MN**, (the Suit Land) and a declaration that Harry Binns son of Henry Binns was just a trustee on behalf of the Plaintiffs and other beneficiaries of the Estate of Henry Binns or family property being the Suit property and order the sub-division of the Suit Land to all the beneficiaries of Henry Binns.

2. The Plaintiffs' case is that they are the administrators and personal representatives of the Estate of Henry Binns (deceased) while the Defendant is the Administrator and personal representative of the Estate of Harry Binns (deceased). The Plaintiffs aver that on 31st December 1964 their late father, Henry Binns (deceased) bought the Suit Property measuring 2.8 acres from one Abdalla Bin Rashid and it was to be family land and caused it to be transferred to his son Harry Binns as trustee of the family by virtue of being the first born of the family. It is the Plaintiffs contention that the Defendant has forgotten her role as trustee and has denied other family members from accessing and developing the land thus denying them their right to own and enjoy the land. They further contend that the registered trustee, Harry Binns was their brother and was only around twenty one years old and jobless when he was registered as Trustee on behalf of other siblings. The Plaintiffs state that there is a family grave yard on the Suit Land wherein both the two widows of their father, Henry Binns were buried together with their grandchildren.

3. The Plaintiffs further state that the Defendant has prevented other family members from utilizing the family property and want the Suit Land to be sub-divided and distributed to all beneficiaries of the estate of Henry Binns including the Defendant who is the Plaintiffs' sister-in-law. They contend that despite efforts to resolve the dispute amicably, the Defendant has neglected, failed or refused to give the Plaintiffs and other family members access to utilize the Suit Property and or sub-divide the same to all the beneficiaries of the estate of Henry Binns, rendering the filing of this suit necessary.

4. The Defendant filed a statement of defence and counter-claim dated 13th November, 2017 in which she avers that **PLOT NO.315/1/MN** was owned by the Defendant's late husband, Henry Binns who purchased it on 31st December 1964 from Mr. Abdalla Bin Rashid and denies that the same is family property as alleged by the Plaintiffs. The Defendant avers that following the demise of her husband, her sister-in-law forged documents purporting to be the deceased's wife and obtained grant of letters of Administration but the grant was nullified by the Court. The Defendant denies that her late husband held the property as a trustee. The Defendant avers that the Plaintiffs have disobeyed Court orders and sub-divided the property and sold it to a 3rd party who has prevented the defendant from accessing the land.

5. By way of Counter-claim, the Defendant seeks judgment against the Plaintiffs for a declaration that the Defendant is the bona fide owner of **PLOT NO.315/1/MN** and an eviction order against the occupants of the Suit Property as well as demolition of structures erected on the Suit Property.

6. The matter was fixed for hearing on 10th April 2018. The Plaintiffs through their advocates on record were served with a hearing notice on 20th November 2017 but failed to attend court during the hearing. The matter therefore proceeded in their absence and in the absence of their advocate.

7. The Defendant testified and did not call any witness. The Defendant stated that the Plaintiffs are her brothers-in-law and that **PLOT NO.315/I/MN** belonged to her late husband, Henry Binns (deceased) who died in 1996. She stated that when she got married to the deceased, she found him owning the Suit Land and they lived on the land. She Defendant added that after the demise of her late husband, the Plaintiffs came and demolished the house she was staying in, forcing her to live in a rented house.

8. The Defendant further stated that after the demise of her husband, her sister-in-law by the name Nelly Latee Njoroge falsely claimed to be the wife of the deceased and applied for letters of administration and claimed the land but the grant of letters of administration granted to her were nullified by the Court in **Mombasa High Court Succession Cause No.173 of 2003** on 13th March 2012. The Defendant reiterated that the land belonged to her deceased husband and denied that he held it as a trustee. She added that the land has now been occupied by persons unknown to her. The defendant asked the court to dismiss the Plaintiffs suit and grant her the reliefs sought in the counter-claim, pointing out that the Plaintiffs did not file any reply to the counter –claim.

9. The Defendant produced the ruling in **Mombasa HC Succession Cause No.173 of 2003**, the Certificate of postal search and certificate of ownership showing the registered owner of **PLOT NO.315/I/MN** as Harry Binns son of Henry Binns. The Defendant also produced a copy of transfer and death certificate.

10. The court has carefully considered the evidence on record. The Plaintiffs did not adduce any evidence to support their claim. The Plaintiffs' suit has therefore not been proved and the same is dismissed.

11. The other issue that calls for determination is whether the Defendant should be granted the reliefs sought in the Counter-claim. Even though the Plaintiffs did not file a reply to defence and defence to counter-claim, and never called any witness, the burden of proof is in no way lessened because the case was heard ex-parte. See **Karugi & Another –v- Kabiya & 3 Others (1987) KLR 347** and **Charterhouse Bank Limited (under Statutory Management) –v- Frank N. Kamau (2016)eKLR**.

12. The Defendant gave evidence that the Suit Land belonged to her deceased husband. The Defendant produced the Certificate of Postal Search, transfer and certificate of ownership showing that the Suit Property is registered in the name of her husband. The Defendant also produced the ruling in **Mombasa High Court Succession Cause No.173 of 2003** in which the Grant of Letters of Administration intestate granted to Nelly Latee Njoroge and Gladys Nyambura Njoroge and confirmed on 21/10/2005 in respect to the estate of Harry Binns (deceased) were annulled and a confirmed grant of letters of Administration issued to Christine Nthemba Binns, the Defendant herein. In that ruling, the court further ordered the Respondents to deliver to the Defendant herein the original documents in respect of **LR NO.315/I/MN**. There is no evidence that has been placed before this court that the orders made in that ruling in favour of the Defendant herein have been set aside. The defendant has tendered documentary evidence that show that she is entitled to the Suit Property. The Defendant has also stated that the Plaintiffs have without any colour of right alienated the suit property to some unknown third party who is in occupation. The Defendant's evidence remains uncontroverted. The Plaintiffs' actions on the suit land are unlawful. I find the evidence on record sufficient to prove that the defendant is the bona fide owner of the property known as **PLOT NO.315/I/MN**. The Defendant is therefore entitled to the orders sought in the counter –claim.

13. The upshot of this is that this court is satisfied that the defendant has proved her case against the Plaintiffs on a balance of probabilities.

Judgment is entered for the Defendant in terms of the counter-claim.

The Plaintiffs' suit is dismissed. The defendant shall have costs of the suit.

Ruling dated, signed and delivered at Mombasa this 11th day of July 2018.

C. YANO

JUDGE