



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

CIVIL SUIT NO. 89 OF 2016

J C..... PLAINTIFF

VERSUS

P K DEFENDANT

JUDGMENT

Introduction

1. The Plaintiff and the Defendant herein were a former couple who cohabited together and conceived a child. At the centre of this suit is property known as Plot Number xxxx situated in [particulars withheld] within Kuresoi measuring 7 ½ acres (the suit property). Both parties in the suit claim to have rights to the property.

Background

2. Sometime in 2010, the Plaintiff and the Defendant had an intimate relationship and conceived a child in 2012 who was born in 4th March 2013. The Plaintiff and the Defendant ended their relationship and parted ways sometime in 2013.

3. The suit property was purchased from one Leonard Anyona Rakubi via an agreement entered into on 6th July 2012 for a purchase price of Ksh. 1,125,000/=.

4. The Plaintiff claims that she equally contributed to the purchase of the property with the Defendant and therefore claims rights to the suit property. In her plaint dated 21st November 2016 and filed 28th November 2016 the Plaintiff seeks the following reliefs:

- i. An order compelling the Defendant to give the Plaintiff her share of the suit property
- ii. An order of permanent injunction restraining the Defendant either by himself, agents, servants, employees or any other party acting howsoever developing, transferring, alienating and/or dealing adversely with the suit property
- iii. The costs of this suit

5. The suit was defended by the Defendant vide a Statement of Defence dated 3rd February 2017 filed on 8th February 2017 in which he denies that the Plaintiff made any contributions towards the purchase of the property

Plaintiff's Case

6. When the case came up for hearing the Plaintiff testified as PW1. She stated that she is a teacher and she lives in [particulars withheld] Division Bomet County. She stated that the Defendant- P K was her husband and that they got married in 2012 under Kipsigis Customary Law. It was her testimony that she stayed with the Defendant for 4 years. She testified that during this period of cohabitation, they decided to buy land in Kuresoi Nakuru County and they entered into a sale agreement to buy the land measuring 7 acres known as Plot No. xxxx situated at [particulars withheld] Scheme in Kuresoi.

7. She went on to testify that she was not a signatory to the agreement and that the same was signed by the Defendant. She said that the purchase price for the land was Ksh. 1,250,000 and she contributed Ksh. 480,000. Her contributions were from salary advances she used to request from her employer. She produced her bank statement from Imarisha Sacco as PEX 1.

8. She said that the Defendant took a cow from her sister worth Ksh. 10,000. She testified that she and the Defendant put up a temporary house on the suit land for which she contributed Ksh. 15,000. She said that they also put up a store for which she contributed Ksh. 5,000.

9. In cross examination, the Plaintiff stated that she stayed in the suit land briefly in December, 2013 and that they even planted maize on the land. She admitted that her relationship with the Plaintiff broke down in December 2013 when the Defendant came home one time and found that she had gone to visit her parents. She said that the bank statement did not indicate to whom the money was paid to as it was a cash withdrawal effected by her. She stated that the Defendant used to collect her contributions personally as he did not have the entire purchase price necessary to acquire the land. She admitted that by July 2012 she was unaware of the exact amount she had contributed towards the purchase of the suit land. She stated that she made a contribution of Ksh. 20,000 for 2 years towards the purchase of the suit land. She admitted that she did not know whether the Defendant paid the purchase price all at once or in installments.

10. When shown PEX 2, the Plaintiff stated that the consent did not indicate she and the Defendant jointly invested in some property. She was shown the demand letter dated 7/9/2015 and the Plaintiff confirmed that it was issued by her advocate and pointed out that the words written by hand on the demand letter were made by the advocate as he captured what the Defendant was saying. The Plaintiff admitted that she did not confirm the name of the vendor and that she was not present when the sale agreement was signed as she had just got the baby and therefore could not travel. She said that the vendor did not give her and the Defendant the title deed as he said he could only do so after the purchase price had been paid in full.

11. In re-examination the Plaintiff reiterated that she contributed Ksh. 480,000/= to the purchase of the suit land as was indicated by her bank statement and that she only stayed on the suit land for one month during the school holidays since at the time, she and the Defendant were both teaching in Bomet. She stated that the consent only dealt with the issue of the child and not the suit land. She also reiterated that the handwritten text on the demand letter was done by her advocate. She said that she met the Defendant in 2008 but that they started staying together in 2011. She stated that her salary in 2012, inclusive of all allowances was Ksh. 30,000. She re-affirmed that she did not know the name of the vendor who sold them the suit land and admitted that she did not know whether the Defendant had obtained the title deed. She stated that she wanted a refund of the amount that she contributed towards the purchase of the suit land or half of the share of the suit property.

Defendant's Case

12. The Defendant testified as DW1. He said that he lived in [particulars withheld] and that he worked as a teacher at [particulars withheld] Primary School. He stated that he wanted his statement recorded on 21/03/2017 to be adopted as his evidence in chief. He testified that he purchased land in Molo from one Leonard Nyakubi on 6/7/2012. He explained that he and the vendor entered into a written agreement for the sale of the land measuring 7.5 acres for a consideration of Ksh. 1,125,000/=. He maintained that he paid for the purchase of the land alone. He explained that he made the payment by taking a loan from Equity Bank and Imarisha Sacco and he pointed out that his bank statements would serve as evidence.

13. He produced the sale agreement as DEX 1, the bank statements from Equity Bank as DEX 2 a) & b) and the statement from Imarisha Sacco as DEX 3. He pointed out that the bank statements indicate that there were monthly loan recovery deductions. He stated that he initially took a loan of Ksh. 400,000 from Equity Bank; took a further Ksh. 1,400,000 loan in 2012 from the bank and another loan of Ksh. 200,000 in 2015 from Imarisha Sacco. He conceded that he had not cleared paying the purchase price and that he had only paid up Ksh. 1,118,000 and therefore the property is yet to be registered in his name.

14. In cross examination, the Defendant stated that there is no evidence to show that he took out a loan of Ksh. 1,400,000 from Equity Bank and explained that the amount is reflected in the bank statement from 2011 which he does not have. He said that he paid the first instalment of Ksh. 500,000 via electronic transfer after going through the agreement but admitted that he had failed to provide evidence of this. He confirmed that he and the Plaintiff started cohabiting in 2011. He denied that the Plaintiff made any contribution towards the purchase of the suit land.

15. The Defendant admitted that the Plaintiff is also a teacher and that in their period of cohabitation, the Plaintiff conceived and gave birth to a child. He confirmed that he was present during the birth of the child and explained that he was the one who took the Plaintiff to the hospital and went on to point out that they were not living together at that time. He stated that he started making monthly remittances of Ksh. 6000/= from 2015 towards the child's upkeep through Birech & Co. Advocates but the Plaintiff stopped him as she claimed that her advocate had not remitted the money to her. He stated that he had receipts for his payments. He admitted that the bank statements he had produced did not show that he took a loan in excess of Ksh. 1,000,000/= from Equity bank nor Ksh. 200,000/= from Imarisha Sacco. He stated that he had paid Ksh. 1,118,000 for the suit property but he had not produced any receipt from the vendor acknowledging the payments.

16. In re-examination the Defendant said that the statements indicated that the bank was making monthly deductions in recovery of the loan he took.

Plaintiff's Submissions

17. In his submissions, learned counsel for the Plaintiff argues that the Plaintiff invested jointly with the Defendant and purchased the suit land and thereafter the Defendant chased the Plaintiff away from their matrimonial home. He further argues that the Defendant illegally and fraudulently denied the Plaintiff her right to enjoy her share of the suit property as a beneficiary. He argues that the Defendant has threatened to dispose of the suit property without any colour of right or lawful authority and hence denying the Plaintiff use of the land. He argues that the Defendant's Statement of Defence did not disprove the Plaintiff's claim to the land and that the Plaintiff has suffered loss and damage as a result of the Defendant's illegal acts. He also argues that the Plaintiff's documents produced as evidence support her claim to the property whereas the documents the Defendant produced as evidence do not support his claim against the Plaintiff.

18. The Plaintiff relied on two authorities in support of their case:

ii. Z.W.N vs P.N.N Nairobi High Court Civil Suit No. 10of 2004 In the matter of Section 17 of the Married Women's Property Act (1882)

In the above-cited cases the marriage between the Plaintiffs and the Defendants therein was undisputed. The facts in both the authorities fundamentally differ from the one in this suit and thus the principles used to determine those matters cannot be used to analyze this suit.

Defendant's Submissions

19. The Defendant's counsel regrettably failed to file submissions.

Issues for Determination

20. Having gone through the pleadings, evidence and the submissions provided, the following issues emerge for determination:

- i. Whether the Plaintiff has *locus standi* to institute ELC No. 89 of 2016.
- ii. Whether the Plaintiff and the Defendant are joint owners of the suit property.
- iii. Whether the Plaintiff is entitled to the reliefs sought

Analysis and determination

21. The first issue I must determine is whether the Plaintiff herein has *locus standi* to institute a suit against the Defendant. According to Black's Law Dictionary, 9th Edition P. 1026, *locus standi* is defined as the right to be heard or appear in court or other proceedings. This in essence, means that someone with no *locus standi* has no right to appear or be heard in such proceedings. This matter was highlighted in **LSK vs Commissioner of Lands & Others, Nakuru High Court Civil Case No. 464 of 2000** where it was held that:

"Locus standi signifies a right to be heard. A person must have a sufficiency of interest to sustain his standing to sue in a court of law".

22. In the current matter, the Plaintiff is suing in her capacity as a **'joint owner'** of the suit property. The Plaintiff's key argument is that she jointly contributed towards the purchase of the suit land. However, from the evidence adduced, it is clear that the sale/purchase of the suit land is incomplete and neither the Plaintiff nor the Defendant have title to the land. The mere fact that the Defendant has been residing in the suit land, does not in itself grant him ownership to the property. The Defendant failed to produce receipt payments from the vendor acknowledging part payment of the purchase price which he claimed to have paid. In view of the fact that the Plaintiff is basing her right to the property through a joint investment she did with the Defendant when they were a couple, the lack of title to the property by either party renders her claim moot. The suit herein is incompetent and she has no *locus standi* to institute this claim.

23. The second matter I must determine is whether the Plaintiff and the Defendant are joint owners on the suit land. On this issue is linked to the first issue in that neither party in this suit has title to the suit land. Thus, the Plaintiff and the Defendant are not joint owners of the suit land as neither party has legal ownership of the land.

24. The third issue for determination is whether the Plaintiff is entitled to the reliefs she is seeking. Her lack of *locus standi* negates her right to institute this claim and consequentially she is not entitled to any of the reliefs sought.

25. Inevitably, the upshot is that the Plaintiff has failed to prove her case on a balance of probabilities and her suit is hereby dismissed. Each party shall bear their own costs.

Dated, signed and delivered, at Kericho this 30th Day of August 2018.

J. M. ONYANGO

JUDGE

In the presence of:

1. Mr. Mwita for the Defendant
2. N/A for the Plaintiff
3. Court assistant - Rotich