



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
MILIMANI LAW COURTS
ELC CASE NO.179 OF 2012

PATRICK LAWRENCE SEKI.....PLAINTIFF

=VERSUS=

ROSE NJAU TARIMO.....DEFENDANT

JUDGEMENT

INTRODUCTION

1. The plaintiff filed a suit by way of originating summons against the defendant in which he sought determination of the following questions:-

1. As to why the defendant should not prepare and correct documents to effect transfer for land Reference Number 209/8192/1 to the plaintiff.

2. As to why in absence of the defendant signing the document, the Deputy Registrar of this Courts should not execute them in favour of the plaintiff within fourteen days of the Court giving such Order.

3. As to why the defendant should not pay the plaintiff the cost of this suit.

2. The defendant and her late husband Emmanuel Kisanane Njau (deceased) were registered as joint owners of LR No.209/8192/1 (suit property). The suit property has since reverted to the defendant by operation of law. The defendant and the deceased are Tanzanian nationals who purchased the suit property which is at Riverside in Nairobi in the year 1985.

PLAINTIFF'S CASE.

3. The plaintiff testified that he met the deceased in or around 1977. He later came to know the defendant in 1985. In 1996, the deceased wanted to sell a house on the suit property. The plaintiff and the deceased went to the offices of Paul Kamau an Advocate where they signed a sale agreement and other documents. The plaintiff deposited the agreed purchase price of Kshs.9,700,000/=.

4. The plaintiff, the deceased and his wife signed an indenture of assignment which was to be registered. The deceased later met the plaintiff at Trattoria Restaurant in Nairobi where the two discussed about some additional payment which the plaintiff was to make. The deceased went to the firm of the offices of their common advocate where he retrieved the original title document to enable him secure a loan . Their common Advocate later passed on.

5. As a result of the demise of their common Advocate, it took time to locate the defendant. The plaintiff finally located the defendant who was in Moshi in Arusha. He now prays that the Court do transfer the suit property to him as the defendant is unwilling to do so.

DEFENDANT'S CASE

6. The defendant testified that the suit property was jointly purchased by her and her deceased husband. They lived in the property but after the demise of her husband, the property was leased out. Sometime in 2012 she received information that someone wanted to meet her in Moshi . She went and met a man who had a letter and upon opening it, she was shocked to note the contents of the letter which required her to sign documents in relation to the suit property and surrender the original title. She was later served with the suit papers herein by way of advertisement in a local daily in Moshi Arusha. The defendant denies ever meeting the plaintiff or signing any documents in relation to the suit property which she says is the source of income which sustains her and her children.

7. The document which she and the deceased are alleged to have signed was subjected to examination by a document examiner who found it to be a forgery.

ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION

8. There is no contention that that the suit property is now registered in the name of the defendant. After going through the pleadings evidence and submissions by the defendant, the issues which emerge for determination are firstly whether the defendant and the deceased sold the suit property to the defendant. Secondly whether the deceased and the defendant signed the indenture dated 10th July 1996 and thirdly whether the plaintiff is entitled to the reliefs in the suit.

Whether the defendant and the deceased sold the suit property to the plaintiff .

9. The plaintiff claimed that he signed an agreement and other papers before an advocate who has since died. He claimed that he paid Kshs.9,700,000/= to the Advocates office for payment to the deceased. There was no sale agreement produced by the plaintiff. Though the plaintiff alleges to have deposited Kshs.9,700,000/= in the office of the lawyer, there is no evidence of such deposit Kshs.9,700,000/= was a lot of money in 1996. There is no evidence whether the deposit was made in cash or by cheque. The plaintiff merely stated that he deposited the money with the Advocate. The Advocate is said to have died the following year after the alleged purchase. In the absence of any sale agreement or evidence of payment, I find that there was no sale of the suit property to the plaintiff as alleged.

Did the deceased and the defendant sign the indenture of conveyance dated 10th July 1996.

10. The plaintiff claimed that the indenture of assignment was signed by the defendant and the deceased and that it was not registered as it was found to be defective. The defendant denied that she or the deceased signed it. The contested document was subjected to a document examiner who examined the signatures therein against the known signatures of herself and the deceased. The document examiner who testified and produced a report in this case found out that the signatures on the alleged indenture of assignment were a forgery.

11. The evidence of the expert was not challenged by any other report by another expert. There was not even a single question put to the expert by the plaintiff's lawyer. In the case of **Dhalay Vs Republic (1995-1998) EA 29**, it was held as follows:-

“Where a qualified expert gives an opinion and reasons thereof and there is no other evidence in conflict with such opinion then such opinion is not for rejection. It can only be rejected where the court is satisfied on good grounds that the opinion is not soundly based”.

12. There is evidence that the plaintiff was known to the deceased. The plaintiff was introduced to the deceased through his nephew who was working for the deceased. The deceased appears to have been a

man of means who had prime properties in Kenya and had interest in one of the giant breweries in Tanzania. He also dealt in coffee exports. The plaintiff appears to have started the scheme of defrauding the deceased's family of their prime property after the demise of the deceased. The forged indenture of conveyance was conveniently dated around 1996 when the advocate died (1997) and the deceased (1998). The Plaintiff was aware that the defendant was also not in the country. This explains why he chose to come to court by way of originating summons so that he could quickly try to have the property registered in his name and perhaps dispose of it quickly. Were it not for the defendant who was keen to see an advertisement in a Tanzanian Newspaper, this suit would have easily gone unchallenged.

CONCLUSION

13. Having carefully analysed the evidence, I find that the plaintiff has failed to prove a case against the defendant. The plaintiff is not entitled to any prayers in the originating summons. I proceed to dismiss the plaintiff's case with costs to the defendant.

Dated, Signed and delivered at **Nairobi** on this **27th** day of **September 2018**.

E.O.OBAGA

JUDGE

In the presence of;-

Mr Ndungu for Mr Muhoro for Plaintiff

Mr Okech for Mr Obutu for Defendant

Court Assistant: Hilda

E.O.OBAGA

JUDGE