



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
ELC CIVIL CASE NO. 222 OF 2016
ELPINA MGHOI MWASHIGADI.....PLAINTIFF
-VERSUS-
MATHEW LYATONGA.....DEFENDANT
JUDGEMENT

1. The plaintiff brought this suit against the defendant asking the Court to grant her the following reliefs:
 - a. **A declaration that the plaintiff is the lawful owner of the house situate on plot No. 232/Miritini within Mombasa County.**
 - b. **An order of a permanent injunction restraining the defendant either by himself or through his agents/servants and or employees from selling, charging, sub dividing, taking possession or otherwise dealing in any manner with the said house situate on plot No. 232/Miritini.**
 - c. **An Order of eviction of the Defendant from the suit property.**
 - d. **An Order directing the OCPD Chagamwe Police Station to assist the plaintiff in enforcing prayer (c) above.**
 - e. **Costs and interest at Court rates.**
2. According to the affidavit of service dated 17th May 2017, the defendant was served on 26th January 2017. The defendant did not file appearance or enter defence within the time prescribed under the law. On 17th May 2017, the plaintiff made a request for an interlocutory judgment to be entered in her favour and the same was endorsed by the deputy registrar on 5th June 2017.
3. On 15th February 2018, the plaintiff proceeded to adduce evidence in support of her case. She said she knew the defendant as they had lived together as husband and wife but that the defendant never paid any dowry. The plaintiff stated she was working while the defendant was not working. She saved some money and also took loans thus got money to buy the suit plot in 2004.
4. That in 2006 the property was registered in their joint names. The plaintiff said she is the one who built the house and even connected electricity account in her name. She prayed for an order of eviction of the defendant from the plot.

5. The plaintiff produced bank statement for the period 2009 – 2011 to demonstrate her account was in funds. She also produced an application to Kenya power made on 19th July 2010 and a quotation for supply of electricity dated 26.11.2007. She further produced the Chief's letter dated 15.3.2013 addressed to all tenants which letter said the houses were jointly owned by the plaintiff and the defendant and the D. O's letter dated 26th March 2013 also referring about joint ownership & several other correspondences.

6. From the plaintiff's own evidence contained in her written statement and orally presented to Court said that the house was bought in 2004. The bank statements produced were for the period running from 2009 which is after the fact of purchase. Secondly the plaintiff admits they lived as wife and husband and this is contained in the bundle of correspondences she has produced. Although she said she is the one who bought the plot, she did not lay any evidence to state who she bought it from and for how much. Other than the electricity bills in her name, she did not satisfy me that she carried out all the developments on the plot alone.

7. Consequently the plaintiff having acknowledged the existence of a relationship during the acquisition of this plot, I am unable to conclude that she is the sole owner of the suit property. Instead I make a finding based on the evidence on record that each of them is entitled to an equal share in the property. Her prayers thus succeeds;

- a. To the extent that she is a lawful owner of the suit property jointly with the defendant.
- b. There be and is issued an order of permanent injunction restraining the defendant either by himself or through his agents/servants and or employees from selling, charging, sub dividing, taking possession or otherwise dealing in any manner with the said house situate on Plot No. 232/Miritini without the consent of the plaintiff.
- c. The plaintiff being entitled to the half share of the suit property I am unable to issue eviction orders. Instead I direct that she be and is hereby allowed to collect rent and or rent out any houses being 50% of the houses on the land.
- d. The OCS Changamwe Police Station to assist the plaintiff in enforcing the order (c) above.
- e. I also award her costs of this suit

Dated & signed at Mombasa this 21st September 2018

A. OMOLLO

JUDGE

Delivered by Justice M. Thande on 21st September 2018

M. THANDE

JUDGE