



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC. CASE NO. 1224 OF 2013

HANNAH WANGUI KIMANI.....PLAINTIFF

VERSUS

ABRAHAM HARRY THUKU KIMANI.....1ST DEFENDANT

THE DISTRICT LAND REGISTRAR, NGONG.....2ND DEFENDANT

JUDGMENT

This suit was filed by way of a Complaint dated 31st May 2012 and filed on 6th June 2012 in which the Plaintiff sought for Judgment to be entered against the Defendants for:

- a. A declaration that the subdivision of the parcel of land known as Ngong/Ngong/1983 (hereinafter referred to as the “suit property”) was irregular, fraudulent, illegal, null and void.
- b. An order directing the 2nd Defendant to revoke and/or cancel the title deeds for the subdivisions of the suit property being Ngong/Ngong/53155 to 53163 (hereinafter referred to as the “subdivisions”) and to revert to the original parcel being the suit property.
- c. Costs of the suit and interest thereon to be borne by the 1st Defendant.

The Pleadings

In the Complaint, the Plaintiff stated that at all material times, she was the joint registered proprietor of the suit property together with her husband Peter Kimani Kamau. She further stated that in August 2011, the 1st Defendant, who is her son, without her consent or authority, proceeded to undertake a survey exercise for the subdivision of the suit property into 9 portions being the subdivisions as follows:

- a. Ngong/Ngong/53155 measuring 0.05 Hectares in the name of the Defendant.
- b. Ngong/Ngong/53156 measuring 0.05 Hectares in the name of the Plaintiff.
- c. Ngong/Ngong/53157 measuring 0.05 Hectares in the name of the Plaintiff.
- d. Ngong/Ngong/53158 measuring 0.05 Hectares in the name of the Peter Kimani Kamau.
- e. Ngong/Ngong/53159 measuring 0.10 Hectares in the name of the Gladys Nyamberi Nyabwari.
- f. Ngong/Ngong/53160 measuring 0.10 Hectares in the name of the Plaintiff.
- g. Ngong/Ngong/53161 measuring 0.40 Hectares in the name of the Joseph Nganga Kimani.
- h. Ngong/Ngong/53162 measuring 0.85 Hectares in the name of the Agnes Mukuhi Kagotho.
- i. Ngong/Ngong/53163 measuring 0.85 Hectares in the name of the Defendant.

She stated further that the subdivision and registration exercise was carried out by the Defendants illegally, irregularly and without her consent or authority as the joint registered owner and consequently the emergent Title Deeds for the subdivisions are null and void and have no legal effect.

The 1st Defendant filed his Statement of Defence dated 16th July 2012 and filed on 23rd July 2012 in which he admitted that the suit property was indeed jointly owned by the Plaintiff, who is his mother, and Peter Kimani Kamau, who is his father. He further stated that in the year 2009, the Plaintiff and his father agreed to have the suit property subdivided into 9 portions. He further stated that the Plaintiff and Peter Kimani Kamau applied to the Land Control Board at Kajiado for the subdivision on 4th May 2009. He further stated that on 5th May 2009, the Plaintiff and Peter Kimani Kamau attended the Land Control Board and obtained consent for the subdivision of the suit property into the subdivisions. He further stated that on 24th February 2010, Peter Kimani Kamau instructed a surveyor to divide the suit property into the subdivisions as per the Land Control Board Consent dated 5th May 2009. He further stated that this was done. He further added that thereafter, on 16th March 2011, the suit property was divided into the subdivisions and the Plaintiff and Peter Kimani Kamau signed the Mutations Forms therefor. He further added that after the subdivision of the suit property, the Plaintiff and Peter Kimani Kamau agreed to give portions of the suit property to their children. He further stated that the Plaintiff and Peter Kimani Kamau visited the Land Control Board at Kajiado on 1st August 2011 to seek for consents for the transfers which they obtained and that they proceeded to transfer the subdivisions to their children or beneficiaries as had been agreed upon. He further stated that after the said transfers, the Land Registrar issued the Title Deeds as per the transfer instructions of the Plaintiff and Peter Kimani Kamau. He further added that the Plaintiff obtained all the consents to subdivide the suit property into the subdivisions and proceeded to transfer the subdivisions willingly and with no coercion. To that effect, he stated that this suit is bad in law, untenable and an abuse of the court process.

The Evidence

The hearing of this suit proceeded on 18th January 2017 when the Plaintiff testified. The Defendants, though served, did not appear at the hearing and the trial of the suit proceeded in their absence. The Plaintiff told the court that she and her husband were the registered proprietors of the suit property until the 1st Defendant, their son, together with a surveyor subdivided the suit property into the subdivisions without her permission or authority. She further told the court that she did not sign the consent to transfer the subdivisions as has been done as at the time she is purported to have done so, she was out of the country. She told the court that she had filed this suit to request for the cancellation of the illegal title deeds to the subdivisions and to restore the original mother title being the suit property.

Analysis and Determination

The main issue for determination in this suit is whether or not the subdivision of the suit property into the subdivisions is illegal, irregular and null and void for lack of permission, consent and authorization by the Plaintiff, who it is common ground, was together with her husband Peter Kimani Kamau, the registered proprietors of the suit property. The Plaintiff has sought to convince the court that she did not grant her permission, consent or authority to the 1st Defendant to have the suit property subdivided into the subdivisions and transferred as had been done. On his part, the 1st Defendant in his Statement of Defence stated that in fact, it was the Plaintiff and her husband Peter Kimani Kamau, the joint registered proprietors of the suit property who took all the necessary steps not only to have the suit property subdivided into the subdivisions but also to transfer the various subdivisions to their children as has been done. The 1st Defendant further stated that the two joint registered proprietors undertook this exercise without any coercion whatsoever.

I have had the opportunity to look through the Plaintiff's bundle of documents which is quite comprehensive. The Land Control Board Letter of Consent dated 5th May 2009 authorising the subdivision of the suit property is stated to have been applied for by both the Plaintiff and her husband Peter Kimani Kamau. In fact, the Letter of Consent is addressed to Peter Kimani Kamau. The 1st Defendant's name does not appear anywhere and there is no evidence that this Letter of Consent was obtained under coercion of any kind. This raises the question on whether the Plaintiff is being honest when she asserted before court that she was not involved in this exercise whatsoever. In the Plaintiff's bundle of documents also has a handwritten letter dated 24th February 2010 written by the Plaintiff's husband Peter Kimani Kamau to one Mr. Chris Kamau authorizing him to undertake the subdivision of the suit property into the subdivisions. This too seems to indicate that the Plaintiff is not truthful when she asserts that the subdivision was done by her son the 1st Defendant without her or her husband's authority, permission or involvement. Further, the Mutation Form used to achieve the subdivisions bears the signature of both registered proprietors of the suit property being the Plaintiff and her husband Peter Kimani Kamau. The Plaintiff has not produced any evidence to show that these signatures are a forgery or fraudulent in any way. In fact, none of these documents used to subdivide the suit property into the subdivisions bear the name or signature of the 1st Defendant but they do bear the names and signatures of the Plaintiff and Peter Kimani Kamau.

Overall, it is my finding that the Plaintiff has not been able to convince this court that she was not involved in the least bit in the subdivision of the suit property into the subdivisions and the subsequent transfer of some of those subdivisions to the named individuals in whose favour title deeds were issued. To the contrary, there is sufficient evidence from the bundle of documents that the Plaintiff produced herself, that she was indeed the author of the subdivision and transfer of the subdivisions to the individuals in whose favour the new title deeds were issued. There is no evidence that her signatures on the various documents were forged or fraudulent in any way. This court therefore arrives at the finding that the Plaintiff and her husband willingly obtained all the necessary documents to get the suit property subdivided into the subdivisions and proceeded to transfer the same to their children.

This suit is accordingly hereby dismissed with no order as to costs.

SIGNED AND DATED BY LADY JUSTICE MARY M. GITUMBI AT NAIROBI THIS 17TH DAY OF OCTOBER 2018.

MARY GITUMBI

JUDGE

DELIVERED BY JUSTICE BERNARD EBOSO AT NAIROBI THIS 23RD DAY OF OCTOBER 2018.

B. M. EBOSO

JUDGE