



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 1197 OF 2016

MOSES MURIMI CHUAGA.....PLAINTIFF

VERSUS

PURITY MUGECHI KIRATU1ST DEFENDANT

JUDGMENT

1. On 19/1/2010 Moses Murimi Chuaga took out an originating summons dated 13/1/2010 seeking the following orders:

1. That this honourable court be pleased to order the respondents jointly and severally to surrender to the honourable court the title documents in respect of the property numbers: Land Reference Numbers 36/111/107 EASTLEIGH, NAIROBI AND LOC. 7 GAKOIGO/1378/47 MURANG'S DISTRICT duly registered in favour of the applicant and Wanjiru Kibui (*now deceased*) as tenants in common and equal shares.

2. That the Director of Survey be ordered to survey and subdivide the subject plots and or pieces of land into two equal shares and issue the necessary deed plans and maps to facilitate the issuance of separate titles in favour of the applicant and the respondents or their nominees.

3. That the Registrar of the High Court of Kenya at Nairobi do sign the necessary deed of partition and transfer of land forms on behalf of the respondents and or their mother's estate in case of non-compliance from their side.

4. That the Registrar of Titles at Nairobi Lands Office and the Land Registrar at Murang'a Land Registry do proceed to accept and register the deed of partition and or the transfer of land documents and issue separate titles in favour of the applicant and the respondents and or their nominees.

2. The originating summons was supported by an affidavit sworn by the plaintiff on 13/1/2010. He contended that together with the late Wanjiru Kibui, they jointly bought **Land Reference Number 36/111/107** situated in Eastleigh Nairobi and **Land Title Number Loc 7/Gakoigo/1378/47** situated in Muranga County and caused the two properties to be registered in their joint names as tenants in common in equal shares. The late Wanjiru Kibui kept the title documents relating to the two properties but she subsequently died before their common interests had been severed. Consequently, he seeks severance orders.

3. The plaintiff contended that the respondents are children of the deceased and he has severally invited them to come forward and discuss ways and means of taking out letters of administration in respect of the estate of their late mother to no avail. He seeks to sever the common interests so that he can develop his shares of the suit properties.

4. I have considered the originating summons together with the evidence before court. Firstly, there is no evidence that the respondents are administration of the estate of the late Wanjiru Kibui. If indeed the respondents are children of the deceased and have refused or neglected to take out a grant of letters of administration, the plaintiff is entitled to take out a citation within the framework of the law of succession Act and the Probate and Administration Rules made thereunder. The rules provide a mechanism of redress.

5. Secondly, I have noted from the official search attached to the affidavit in support of the originating summons that Title Number Loc.7/Gakoigo/1378/47 was lease a valid for 33 years from 1/3/1971. No evidence of renewal of the lease has been presented to the court to demonstrate that the title therein is still available to the hitherto registered lessees and is available for severance as contemplated by the plaintiff.

6. It is unfortunate that these two critical issues escaped the attention of counsel. Regrettably, the orders sought by the plaintiff cannot be granted on the basis of an originating summons taken out against strangers and in the absence of evidence of renewal of the expired lease.

Summary & Disposal Orders

7. In summary, the plaintiff has not presented to the court sufficient material to demonstrate that the defendants have *locus standi* to respond to the originating summons herein on behalf of the estate of the late Wanjiru Kibui. Secondly, the plaintiff has not presented evidence to show that the lease in respect of Land Title Number Loc. 7/Gakoigo/1378/47 was renewed after its expiry. In the circumstances, the originating summons herein is rejected. The plaintiff is at liberty to bring a proper suit against proper respondents, supported by proper evidential materials. This File shall be marked as case closed.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 19TH DAY OF NOVEMBER 2018.

B M EBOSO

JUDGE

In the presence of:-

Mr Baragu Advocate for the Applicant/Plaintiff

June Nafula - Court Clerk