



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 152 OF 2017(OS)

SAMMY NJOROGE MWANGI.....APPLICANT

VS

REGIONAL LOANS BUILDING SOCIETY.....RESPONDENT

JUDGMENT

1. The Applicant brought an originating summons under Order 37 rule 4 of the Civil Procedure Rules, Section 3A of the Civil procedure Act and all other enabling provision of the law. He sought the following orders;

- a. That a declaration that the property known as L.R LOC 2/MAIRI/397 (suit land) is wholly owned by the Applicant herein.
- b. That the loan taken from the defunct Respondent on security of the suit land has been fully settled.
- c. That a discharge of charge be and is hereby effected in relation to the parcel of the suit land.

2. The application is based on the grounds as follows; That on the 19/12/85 the Applicant took a loan in the sum of Kshs. 100,000/- from the Respondent. That he surrendered the original title to the Respondent who registered a legal charge over the said title deed to secure the loan. That he repaid the loan in full but before the charge was discharged the Respondent closed its operations. That the Applicant has unsuccessfully tried to trace the Respondent.

3. The application is supported by the supporting affidavit of the Applicant where he reiterated the grounds set out in Para 2 above and added that the repayment receipts and or proof of payments were destroyed in a fire incident in his house in 1995 where he lost *inter alia* title documents, receipts and his wife Grace Wanjiku Njoroge who perished as a result of the inferno. He annexed a police abstract to support the averments. He has attached an official search to support his claim of ownership of the suit land. He urged the Court to order the District Land Registrar Muranga to discharge the title and issue a fresh title to him. That there is no known claim pending and owing from the chargor or any entity in relation to the property. Finally, that the Respondent will not be prejudiced by the granting of the orders.

4. By an order of the Court issued on the 6/3/18, the Respondent was served by way of substituted service vide the Daily Nation of 29/3/18 but did not enter appearance nor file any response to the application. On the 16/4/18 the Applicant sought for judgment in default of appearance and or defense which was granted on the 30/5/18 and the matter was set down for hearing of the formal proof.

5. At the formal proof the Applicant testified and informed the Court that he is a retired civil servant having worked as the area Chief of Kangari Location in Kigumo Division in Muranga. That he is the registered owner of the suit land and he borrowed a loan in the sum of Kshs 100,000/- which he secured using the suit land from the Respondent on the 19/12/85. That he repaid the loan in full. He informed the Court that the documents evidencing the repayment of the loan were destroyed in a fire incident that burned down his house. He produced police abstract to support this evidence. He informed the Court that the whereabouts of the Respondent cannot be traced despite his efforts to do so including service by substituted service. That the Central Bank confirmed to his lawyers vide a letter dated the 30/11/15 that the Respondent is not licenced under the Central Bank of Kenya as a building Society and that the Central Bank of Kenya has never dealt with the entity. The Registrar of Companies in their letter dated the 13/2/18 informed the Applicant that they did not have information on the Respondent. He urged the Court to grant his prayers.

6. The Applicant filed written submissions which I have read and considered.

7. It is not in dispute that the Applicant owns the suit land going by the green card certified by the Land Registrar on the 2/8/18 having become register on the 27/9/85. On the encumbrance section a charge was registered to secure a sum of Kshs 100,000/- in favour of the Respondent. The said loan remains undischarged.

8. The Applicant has given uncontested evidence that the loan has been repaid in full. He contended that the evidence of repayment was destroyed in an inferno that razed his house in 2004 where it is reported in the police abstract that destroyed important documents and his

wife perished thereto. This evidence is not contested.

9. I rely on the case of **Rajnikantkhetshi Shah Vs Habib Bank A.G Zurich HCCC No 246 of 2011**. In this case Justice Gikonyo held that the continued holding of the legal charge on the suit land by the defendant bank was unlawful, inequitable and unconscionable. In the instant case according to the feedback from Central Bank of Kenya, the official regulator and licensee of all banks and firms that offer financial services, it is doubtful whether the Respondent was offering financial services in a legitimate manner. The Registrar of Companies under which all companies, building societies, banks etc are registered did not have any information on the entity as well. Leaving the charge subsisting on the title in my view will create unnecessary hardship to the Applicant's right of redemption of the suit land in view of the whereabouts of the Respondent not being traced.

10. In the absence of evidence to the contrary the Court grants the Plaintiffs' prayers as prayed. Fortified under section 3A of the Civil Procedure Act and in the interest of justice I make the following orders;

- a. It is hereby declared that the Applicant owns the suit land.
- b. That the loan secured by the charge in favour of the Respondent is hereby declared fully paid up.
- c. That the charge registered on the suit land in favour of the Respondent on 19/12/85 be and is hereby declared as duly discharged.
- d. No orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 20TH DECEMBER 2018

J.G. KEMEI

JUDGE

Delivered in open Court in the presence of:

Mbuthia HB for Kimani for the Plaintiff

Defendant – Absent

Irene and Njeri, Court Assistants