



**REPUBLIC OF KENYA**  
**ENVIRONMENT AND LAND COURT**  
**AT MILIMANI**

**ELC SUIT NO. 376 OF 2009**

**BILHA WANJIKU NDUNGU.....PLAINTIFF**

**VERSUS**

**KURIA GORO.....DEFENDANT**

**JUDGEMENT**

**INTRODUCTION**

1. The Plaintiff is the administratrix of the Estate of her late mother **Lucy Njoki Goro** (Deceased) who was a sister to the defendant. The Plaintiff is a daughter to the deceased. The deceased was the allottee/lessee of all that parcel of land known as **Plot No.B 0816A Dandora Phase II** (suit land).

2. The Plaintiff brought this suit against the defendant claiming the following reliefs;-

*a. An order declaring that the transfer of parcel of Land No.B 0816 A Dandora Phase II to the defendant was fraudulently obtained and the same should be reversed back to the deceased's name Lucy Njoki Goro or to the Plaintiff.*

*b. An order for payment of mesne profits since 1983 to date.*

*c. Costs of this suit.*

*d. Interest of (b) at Court rates*

*e. Any other or further relief this court may deem fit to grant.*

3. The defendant who was duly served with a hearing Notice did not attend the hearing. The hearing therefore proceeded ex-parte.

**PLAINTIFF'S CASE**

4. The Plaintiff testified that she is the daughter of the deceased who was the allottee of the suit land. The deceased died on **1<sup>st</sup> June 1980**. On **18<sup>th</sup> October 1983**, the defendant visited the offices of the Public Trustee where he filled form P.T 1 in which he indicated that the deceased was single and had no children. Based on this false information, the public Trustee wrote to the Director of Housing Development, Nairobi City Commission who then changed the ownership of the suit land into the name

of the defendant. The defendant has since been enjoying rental income from the suit land.

5. The Plaintiff did not suspect that there was anything wrong with the deceased's property as she trusted her uncle. She however became suspicious when she asked the defendant to give her documents of the deceased. The defendant did not co-operate. This aroused her suspicion. In 2007, she discovered that the defendant had fraudulently changed the suit land into his name in 1983 hence the filing of this suit in 2009.

### **ANALYSIS OF EVIDENCE**

6. I have gone through the evidence by the Plaintiff as well as the documents produced by the Plaintiff. It is clear that on **18<sup>th</sup> October 1983**, the defendant went to the Public Trustee and filed P.T Form 1. In this form, the defendant indicated that the deceased was single and had no children. That he was the only person related to the deceased. The records in relation to the suit property were then changed into the defendant's name.

7. The Plaintiff produced a letter dated 9<sup>th</sup> November 1987. This letter was written from the Public Trustee's office and was addressed to the Director of Housing Development Nairobi City Commission. The Public Trustee confirmed that the defendant was the right heir to the estate of the deceased.

8. The Plaintiff also produced a letter dated **27<sup>th</sup> June 1984**, from the District Commissioner's Office Nyandarua. The letter was addressed to the Public trustee. The letter was confirming that the defendant was the only brother to the deceased and that the deceased's parents had all died and further that the deceased had no children.

9. When the plaintiff's advocates took up the issue with both the City Council of Nairobi and the Public Trustee, the advocates received correspondences dated **10<sup>th</sup> June 2008**, and **29<sup>th</sup> July 2008**, respectively confirming that the defendant had been registered as owner of the suit land as he was the only heir to the Estate of the deceased.

10. The defendant filed a defence in which he conceded that he had indeed changed the ownership of the suit land into his name but that this was with the permission of the deceased. The defendant also claimed that he had transferred the suit land into his name to recover medical charges he had paid on behalf of the deceased when she was ailing. The defendant did not disown the Plaintiff.

11. It is therefore clear that the change of ownership of the suit land was through fraud as particularized by the Plaintiff in her statement of claim. Had the defendant indicated that the deceased left behind a child, the records would not have been changed into his name. The defendant hatched a scheme to defraud the plaintiff. This scheme started with confirmation which was false from the District Commissioner's Office Nyandarua that the deceased had no children. This scheme went on to the office of public Trustee where a false declaration was made by the defendant that the deceased had no children.

12. It is the confirmation by the Public Trustee that the defendant was the rightful heir of the Estate of the deceased that the City Commission changed records of ownership into the defendant. The defendant had been given time to file his list of documents but he did not. His lawyers made a belated attempt to come out of record for him, but they did not come to prosecute the application to cease acting for him. When a hearing Notice was served upon the firm representing the defendant, they did not attend hearing.

### **CONCLUSION**

13. The Plaintiff's evidence remains uncontroverted. I find that the Plaintiff has proved that there was indeed fraud involved in change of ownership of the suit land into the name of the defendant. The Plaintiff in her pleadings indicated that there were rental premises on the suit land and that the Defendant has been enjoying the same. There was no evidence at all adduced to show the kind of rental houses which were on the property if at all any were there. It is therefore difficult for the court to assess mesne

profits.

14. It is now clear that the best person who should have inherited the deceased's property is the Plaintiff. The defendant should not have been recorded as owner of the suit land. I therefore find that the Plaintiff has proved her case on a balance of probabilities save for the aspect of *mesne profits*. I consequently make the following orders;-

- a. A declaration that the transfer of parcel No. B 0816 A Dandora Phase II in the defendant's name was fraudulently obtained. The entries should be reversed and the name of the plaintiff registered thereof in place of the defendant.*
- b. The costs of this suit shall be borne by the defendants.*
- c. The claim for mesne profits is rejected as there was no basis laid for its grant.*

Dated, Signed and Delivered at *Nairobi* this *9<sup>th</sup>* day of *March 2017*.

**E.O .OBAGA**

**JUDGE**

In the presence of ;-

..... For the Plaintiff

..... For the Defendant

Court Assistant :