



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KISII

CASE NO. 16 OF 2015

KENNEDY MOSETI MOMANYI PLAINTIFF

VERSUS

GILTA INVESTMENT CO. LTD 1ST DEFENDANT

DR. ANAL RATILAL TAILOR 2ND DEFENDANT

JUDGMENT

1. By a plaint dated 20th December, 2014 the plaintiff who is represented by Mr. Nyatundo Advocate, seeks against the defendant the following orders:

(a) An order that the defendants' purported acquisition of ownership of Plot No. 31 Gekomu Market is wrongful, unlawful, null and void ab initio.

(b) An order that the defendants' purported registration as owner(s) be cancelled unconditionally and the record do revert to show the name of the deceased Joseph Momanyi Nyaruri.

(c) An order of injunction permanently restraining the defendants, their agents, servants, successors/heirs and/or assigns from claiming, trespassing upon or interfering with the deceased's estate (plaintiff's) ownership, possession and/or enjoyment of his half share in said Plot No. 31 Gekomu Market.

(d) Costs and interest.

2. The plaintiff's claim is in respect of ownership of Plot No. 31 Gekomu Market within Kisii Town. It measures approximately 50ft by 100ft in size. The plot was owned by Joseph Momanyi Nyaruri and Migeta Mangoa (both deceased). The defendants denied the plaintiff's claim in their defence dated 16th February 2015.

3. This suit is fixed for mention today to confirm settlement of the matter. Mr. Nyatundo counsel for the plaintiff and Mr. Soire for the defendant have referred the court to consent **Ref No. C/DMN/086/2014** dated 25th February, 2015. It is in the following terms:-

“(1) That the defendants do jointly and severally pay the plaintiffs a sum of kshs.2,000,000/= (Kshs.2Million only) being the agreed value of their share in Plot No. 31 Gekomu Market;

(2) That the defendants do accordingly keep the subject property and the plaintiff's hereby

absolutely relinquish their claim(s) thereto on behalf of their deceased father's estate and on their own behalf.

(3) That the defendants do pay the plaintiff's costs for the suit, to be taxed, if not agreed.

(4) That the plaintiffs hereby acknowledge receipt of Kshs.2Million in satisfaction of 1 above.

(5) That in default, execution do issue.

(6) That upon satisfaction of the above, this matter be marked as fully settled." (emphasis mine)

4. I have considered the entire pleadings and the written consent signed by the plaintiff's counsel and defendant's counsel. I am conscious of **Article 159 (2) (c) of the Constitution of Kenya 2010 and Section 20 of the Environment and Land Court Act, 2012** on the promotion of alternative forms of dispute resolution. I note that the consent is relevant thereto.

5. I accordingly adopt the consent dated 25th February 2015 as the Judgment of this court. The dispute is hereby marked as fully settled.

6. The costs follow the event and are at the discretion of the court under the proviso to Section 27(1) of the **Civil Procedure Act**, Cap 21 Laws of Kenya. I therefore, invoke the decision in **Rai -vs- Rai Petition No. 4 of 2012, Supreme Court of Kenya** and order that costs abide term No. 3 of the consent in this matter.

G. M. A. ONGONDO

JUDGE - MIGORI

(SITTING AT KISII ELC SERVICE WEEK)

Judgment delivered, signed and dated in open court at Kisii this 16th day of May, 2017.

G. M. A. ONGONDO

JUDGE - MIGORI

(SITTING AT KISII ELC SERVICE WEEK)

In the presence of:

Mr. Nyatundo for the appellant

Mr. Soire for the respondent

Ruth court assistant