



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 866 OF 2016

JANE GATAA KAHARE.....PLAINTIFF

VERSUS

NYAKINYUA FARMERS COMPANY LIMITED.....1ST DEFENDANT

JAMES NDUNG’U MBERENJO 2ND DEFENDANT

JUDGMENT

1. The plaintiff is a granddaughter to the late **LILIAN WAIRIMU KAHUHA** also known as **Wairimu Kahuha** [hereinafter referred to as “**the deceased**”]. She brought this suit in her capacity as administrator of the estate of the deceased. Through a plaint dated 26/7/2016 she seeks a declaratory order to the effect that the deceased’s estate is entitled to **LAND TITLE NO. LONGONOT/KIJABE BLOCK 6/735** among other prayers.

2. The plaintiff’s case is that the 1st defendant is a land buying company serving as a vehicle through which members buy land. Prior to her death, the deceased held share certificate numbers 2723, 1972 and 735 pursuant to which, through balloting, she was allotted Parcel Numbers **Longonot/Kijabe Block 6/2723, 1972 and 735**. The deceased transferred Parcel Numbers 2723 and 1972 to the plaintiff’s mother, Esther Wangui Kahare and retained Parcel No. 837 in her name. Unknown to the estate, the 1st defendant irregularly and illegally transferred Parcel Number Longonot/Kijabe Block 6/735 to the 2nd defendant. She contends that this is the parcel where the deceased had established her home. She further contends that this is the parcel on which the deceased was buried.

3. On 13/3/2017, the Deputy Registrar certified that the defendants had been properly served with summons to enter appearance. On 6/4/2017 I directed the plaintiff to serve a hearing notice upon the defendants through a notice in the Daily Nation Newspaper. On 6/9/2017, the plaintiff filed an affidavit of service containing copy of a hearing notice published in the Daily Nation on 17/7/2017. Satisfied that proper hearing notice had been served, I allowed *ex parte* hearing on 25/9/2017.

4. At the hearing, PW1, Jane Gataa Kahare, adopted her written statement dated 26/7/2016 in which she restated her case as summarized above. She produced: [i] Limited Grant of Letters of Administration issued in respect of the estate of the deceased, issued to her on 18/7/2016; [ii] Share Certificate No. 213 for 50 shares issued by the 1st defendant on 11/6/1974; [iii] Share Certificate No. 2153 for 50 shares issued by the 1st defendant on 27/3/1982; [iv] Ballot No. 2723; [v] Ballot No. 1972 and Ballot No. 735; [vi] copy of Title Deed in respect of Longonot/Kijabe Block 6/735 and copy of title Deed in respect of Longonot/Kijabe Block 6/2723. She urged the court to grant her prayers.

5. Both defendants did not file statements of defence. The plaintiff’s case is therefore uncontroverted.

6. The reason why the court insisted that the hearing notice be served through a notice in the newspaper is that the court was keen to know how the 2nd defendant came to be registered as proprietor of a piece of land that had allegedly been allocated to the deceased and on which the deceased and members of her family have lived and have been buried. That evidence was not forthcoming. In the absence of any controverting evidence, I would accept the plaintiff's case as presented. I accordingly enter judgment in favour of the plaintiff in the following terms:

a) It is hereby declared that the estate of the late Lilian Wairimu Kahuha alias Wairimu Kahuha is entitled to Land Parcel Number Longonot/Kijabe Block 6/735.

b) The Land Registrar shall rectify the Land Register to reflect the name of Lilian Wairimu Kahuha alias Wairimu Kahuha as the proprietor of Land Parcel Number Longonot/Kijabe Block 6/735.

c) The defendants are hereby restrained against interfering with Land Parcel Number Longonot/Kijabe Block 6/735.

d) The estate of the late Lilian Wairimu Kahuha alias Wairimu Kahuha shall have costs of this suit.

Dated, signed and delivered at Nairobi on this 29th day of November, 2017.

B M EBOSO

JUDGE

In the presence of:

N/A: for the Plaintiff

..... for the Defendants

Halima Abdi: Court Assistant