



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 157 OF 2015

P K A.....PLAINTIFF

VERSES

H S A.....1ST DEFENDANT

K P A.....2ND DEFENDANT

JUDGMENT

The facts giving rise to this suit were set out in the ruling of this court made on 27th May, 2016. On 25th September, 1995, the Plaintiff entered into a marriage with the Defendants' son, one M S A (hereinafter referred to as "M") at the [particulars withheld] Temple in South Hall, London, United Kingdom. The Plaintiff and M moved to Kenya in October, 1995. On 8th June, 1996 the couple were blessed with a son, A S A (hereinafter referred to as "A"). When the Plaintiff and M arrived in Kenya, they were accommodated at the Defendants' home situated on LR No. 3734/[particulars withheld], Riverside Drive, Nairobi. At the said home, they occupied a detached four bedroomed house (hereinafter referred to as "the suit property") as their residence.

In the year 2004, serious differences arose between the Plaintiff and M. The said differences were not resolved. By the year 2006, the marriage between the Plaintiff and M had broken down irretrievably. This ignited a series of disputes which ended up in court. The first dispute that landed in court concerned the custody of A. M filed a suit for the custody of A in the Children's Court. The case was moved to the High Court at Nairobi Family Division where it was heard by Onyancha J. In a judgment that was delivered on 1st July, 2009, Onyancha J. gave custody of A to M with limited visitation rights to the Plaintiff. As at the date of this judgment, M had already moved out of the suit property which he had occupied with the Plaintiff and was staying elsewhere with A. The Plaintiff on the other hand, remained in occupation of the property.

While the child custody case was pending, M filed a petition in the High Court for the nullification of his marriage to the Plaintiff. The Plaintiff filed a cross-petition to which she sought among others, an order that all properties held solely by M and those held by him jointly with his extended family be declared matrimonial property and the Plaintiff be awarded half share thereof. The Plaintiff also sought maintenance, child custody and support. M petition for the nullification of his marriage to the Plaintiff was also heard by Onyancha J. In a judgment that was delivered on 3rd July, 2009 a few days after he had granted M the custody of A, Onyancha J. nullified the marriage between the Plaintiff and M on the ground that the same was illegal, null and void. The court found that the Plaintiff had no legal capacity to enter into a marriage at the time her marriage to the Plaintiff was purportedly celebrated since her previous marriage had not been lawfully terminated.

The Plaintiff was not satisfied with the two decisions by Onyancha J. and preferred an appeal against the same to the Court of Appeal. The Court of Appeal upheld the decision of Onyancha J. on the nullification of the marriage between the Plaintiff and M but allowed the Plaintiff's appeal on child custody. In a judgment that was delivered on 10th June, 2011, the Court of Appeal gave custody of A to the Plaintiff and M jointly. The court made a further order that "*The mother shall continue occupying the matrimonial home at Riverside Drive where the child will reside wherever he is with the mother*". The Plaintiff continued to occupy the suit property even after the nullification of the Plaintiff's marriage to M.

On or about 20th January, 2015, M wrote to the Plaintiff through the Defendants' advocates on record demanding vacant possession of the suit property. In the letter, M claimed that he wanted to hand over the suit property to the Defendants who were the owners thereof. The Defendants also wrote to the Plaintiff at the same time through the said firm of advocates demanding possession of the suit property. It is these letters that prompted the filing of this suit. In her plaint dated 24th February, 2015, the Plaintiff has averred that when M left the suit property in May, 2007 and started staying separately, the Plaintiff also wanted to move out of the property and go back to the United Kingdom. The Plaintiff has averred that when the Defendants learnt of her intention, they pleaded with her to stay on and promised her that they would try to reconcile her with M. The Plaintiff has averred that in order to induce her to stay in Kenya, the Defendants promised her that they would give her the suit property. The Plaintiff has averred that the Defendants undertook not to evict her from the suit property whatever the outcome of the marriage nullification proceedings which were going on in court at the time between her and M. The Plaintiff has averred that the Defendants also promised to pay all her bills.

The Plaintiff has averred that in reliance on these promises made by the Defendants, she rejected job offers in Dubai and London and missed a chance to start a new life. The Plaintiff has averred further that following the promise and assurance by the Defendants that the suit property would be given to her, she spent considerable time, money and effort in improving the suit property. The Plaintiff has averred that she carried out extension to the suit property, installed new floors and carried out interior design and decoration. The Plaintiff has averred that in view of the foregoing, she has acquired equity in the suit property which should be satisfied by the transfer of the beneficial interest in the said property to her. The plaintiff sought judgment against the Defendants for;

- a) A declaration that the Plaintiff is entitled to a beneficial life interest in the house situated on L.R No. 3734/[particulars withheld] (the suit property) having acquired an interest in the same by virtue of proprietary estoppel.
- b) A permanent injunction restraining the Defendants, their agents and/or servants from intimidating, harassing or interfering in any way with the Plaintiff's peaceful possession of the house situated on L.R No. 3734/[particulars withheld].
- c) Costs of the suit.
- d) Any other relief this court may deem fit to grant.

The Defendants entered appearance and filed a joint statement of defence on 11th March, 2015. In their defence, the Defendants averred that the Plaintiff occupied the suit property consequent to a purported marriage between the Plaintiff and M which was annulled by the court. The Defendants averred that the Plaintiff was a guest of a licensee which status the Plaintiff had acknowledged in the various cases the Plaintiff had with M.

The Defendants denied that the Plaintiff had contemplated leaving the country after M moved out of the suit property. The Defendants averred that after the fallout between the Plaintiff and M, the relationship between the Defendants and the Plaintiff deteriorated. The Defendants denied making any representation or promise to the Plaintiff as alleged in the plaint. The Defendants averred that they did not share a cordial relationship with the Plaintiff for them to have extended to her any care or concern. The Defendants denied that the Plaintiff turned down job offers because of the alleged promise they had made to her in respect of the suit property.

The Defendants averred that the Plaintiff continued to occupy the suit property not as a result of any representation that was made to her by the Defendants but a result of the orders that were made by various courts in the cases she had with M. The Defendants averred that A on whose account the orders aforesaid were made is over 18 years and resides in the United Kingdom. The Defendants averred that the Plaintiff's suit is an extortion claim. The Defendants averred that during the pendency of the various suits between the Plaintiff and M and thereafter, the Plaintiff made attempts to extort a settlement of her perceived claims against M from the Defendants.

The Defendants averred that the improvements which the Plaintiff claims to have carried out on the suit property were not approved by the Defendants and that in any event, the much the Plaintiff can claim from the Defendants is the value of such improvements but not the suit property.

At the trial, the Plaintiff adopted her witness statement dated 24th February, 2015 as her evidence in chief. The Plaintiff also gave oral evidence and produced a number of documents in support of her case. In her evidence, the Plaintiff stated as follows. She is a British citizen. She resides in the suit property. She entered the suit property in October, 1995 as a wife of M. M is the first born son of the Defendants. She used to work in Dubai before she got married to M in London. M brought her to his family home in Kenya. The Defendants allowed her to reside on the suit property. M and she had a son on 18th June, 1996.

They lived happily with the Defendants. Her relationship with the Defendants was cordial. The Defendants accepted her as part of the family. Her differences with M started in the year 2004. M filed a suit seeking custody of their son, A and thereafter sought nullification of their marriage. On 23rd May, 2007, M left the matrimonial home on the suit property with A to unknown destination. He took with him half of the furniture from the house. The 1st defendant who is deceased assured her that all will be well. The Defendants told her that M would come back with A. She was shocked by this development.

Her parents and other members of her family who reside in the United Kingdom were equally shocked. They asked her to leave Kenya and go back to England. She was offered a job in the United Kingdom and in Dubai. While she was planning to leave Kenya, the Defendants, more particularly the 1st Defendant kept assuring her that M would come back with their son and that everything would come back to normal. The Defendants also told her that the suit property was her home and that she should continue occupying the same.

As a result of these representations by the Defendants, she asked her family not to put pressure on her to leave Kenya. She told them that she had been given assurance that all will be well. She also turned down Dubai job offer. Since M had left with almost 70% of the house furniture, she had to buy new furniture. She also built an extension to the suit property and made improvements to the interior of the house. On 20th February, 2015, the security guard came to the suit property and handed to her two letters from the Defendants' advocates on record demanding that she vacates the suit property. On receipt of these letters, she came to the realization that the promises that had been made to her by the Defendants were not true. She felt that she had been lied to and that it was not fair for the Defendants to throw her out of the suit property.

In cross-examination, the Plaintiff admitted that her marriage to M was nullified by the High Court and that the nullification of the said marriage was confirmed by the Court of Appeal. She admitted that the court had found her marriage to M invalid. The Plaintiff told the court further that the Defendants did not promise to give her the suit property. They only assured her that she would continue to stay on the suit property. She could not however recall the exact dates when the assurances were made. She denied that she occupied the suit property as a guest of M. She stated that she did not build the extension to the suit property but renovated the same. She stated that the extension was built by the 1st defendant between the year 2004 and 2006. She admitted that the only reason why she entered the suit property was her relationship with M which was terminated by the court. She denied that the orders that had been made in her favour which allowed her to reside in the suit property lapsed when A reached 18 years. In re-examination, the Plaintiff told the court that she was seeking life interest in the suit property.

The Defendants called one witness, M S A (M). In his evidence, M stated as follows. The Defendants are his parents. The 1st Defendant who was his father died on 4th March, 2006. The 2nd Defendant is still alive. He got married to the Plaintiff in September, 1995 in London, United Kingdom. The suit property is owned by the Defendants. He lived on the suit property with the Plaintiff from November, 1995 until the middle of 2007. He lived on the suit property as the son of the Defendants. He brought the Plaintiff to the suit property as his guest. Differences arose between him and the Plaintiff and their marriage was nullified by the court. In the divorce case and child custody case which he filed against the Plaintiff, the Plaintiff sought various reliefs against him including maintenance and some money which were not granted by the court. The Court of Appeal upheld the decision of the High Court with regard to the said reliefs which the Plaintiff had sought. The Court of Appeal ordered that the Plaintiff was to remain in occupation of the suit property until their son, A reached 18.

After he failed to reconcile with the Plaintiff he moved out of the suit property to go and stay in an apartment while the Plaintiff remained on the suit property. Neither he nor the Defendants permitted the Plaintiff to remain in occupation of the suit property. The Plaintiff continued to occupy the suit property by virtue of the orders of the court. His son with the Plaintiff, A reached 18 on 18th June, 2014 and was living in South Africa after finishing school in the United Kingdom. He instructed his advocates to write to the Plaintiff to vacate the suit property because the Defendants required the same. The Plaintiff refused to vacate the suit property and filed this suit. The Defendants did not have a cordial relationship with the Plaintiff particularly the 2nd Defendant. The Plaintiff was in talking terms with the 1st Defendant. The Defendants could not have made any promise to the Plaintiff in 2007 in respect of the suit property and no such promise was made. The Plaintiff did not mention such promise in the various cases he had with the Plaintiff.

The extension to the suit property was built between 2002 and 2003 and was paid for by the 1st Defendant. The Plaintiff did not make any financial contribution towards the construction of the said extension. The Plaintiff had no financial means and as such could not have made any financial contribution. Her contribution if any was limited to ideas as the extension was to the bedrooms and bathrooms. The Plaintiff had claimed money from the Defendants. At one time, she claimed Kshs.100 million which the Defendants did not pay.

In cross-examination, M stated as follows. The Plaintiff had demanded from the 1st Defendant US\$ 4million in his presence. The Plaintiff entered the suit property as his wife in October, 1995. His differences with the Plaintiff started in 2003/2004. He wanted to evict the Plaintiff from the suit property but the Plaintiff obtained a restraining order. The Plaintiff remained in occupation of the suit property as a result of a court order. The Plaintiff was supposed to move out of the suit property when their son reached 18 years. That is when the court order that had been made in her favour lapsed. From 18th June, 2014, the Plaintiff occupied the suit property forcefully. The 1st Defendant was in Nairobi and was of sound mind. She could not attend court because she was unwell and was still grieving. The invoices which the Plaintiff produced in evidence were not for the extension of the suit property.

In re-examination, M stated that the suit property belonged to the Defendants and that the Defendants had granted them permission to occupy the same. He stated that the Plaintiff made several claims against the 1st Defendant and demanded various amounts at different times. He stated that the 1st Defendant did not give in to the Plaintiff's demands and that she reported the 1st Defendant to the Police. He stated that at that point the 1st Defendant's relationship with the Plaintiff worsened and that the Plaintiff never reconciled with the Defendants.

After the close of evidence, the advocates for the parties made closing submissions in writing. The Plaintiff filed her submissions on 8th February, 2017 while the Defendants filed their submissions on 16th March, 2017. I have considered the pleadings, the evidence tendered by the parties and the submissions of counsel. The Plaintiff has claimed beneficial interest in the suit property on account of proprietary estoppel. In their submissions, the parties identified the following as the issues that have arisen for determination in the suit:

1. Whether the Plaintiff has established the elements of proprietary estoppel?
2. If the answer to the question above is in the affirmative, what is the appropriate relief which should be granted to the Plaintiff to satisfy the equity that has been established?
3. Who should bear the costs of the suit?

The first issue:

In *Halsbury's Laws of England*, 4th Edition, Volume 16(2) paragraph 1089, that was cited by the Plaintiff in her submissions, the authors have stated as follows on the elements of proprietary estoppel:

“Proprietary estoppel usually arises when the representation consists of a promise of an interest in land although its principles have been used in the context of commercial relationships not involving such promise. The traditional formulation was based on the principle that, where the owner of land (A) knowingly allowed his rights to be infringed by another(B) who expended money on the land in the mistaken belief that it belonged to B, A could not afterwards be allowed to assert his own title to the land. From this formulation a five-fold test, referred to as ‘the five probanda’, developed, under which the following circumstances had to be present in order that an estoppel might be raised against A:

(1) B must be mistaken as to his own legal rights; if he is aware that he is infringing the rights of another, he takes the risk of those rights being asserted;

(2) B must expend money, or do some act, on the faith of his mistaken belief; otherwise, he does not suffer by A’s subsequent assertion of his rights;

(3) acquiescence is founded on the conduct with the a knowledge of one’s legal rights, hence A must know of his own rights;

(4) A must know of B’s mistaken belief; with that knowledge, it is inequitable for him to keep silence and allow B to proceed on his mistake;

(5) A must encourage B in his expenditure of money or other act, either directly or by abstaining from asserting his legal right.

This five-fold test has, however, now largely been abandoned in favour of a three-fold inquiry based not on B’s mistake but on an agreement between A and B or on A’s encouragement of B’s expectation. The court will inquire:

(a) whether an equity in favour of B arises out of the conduct and relationship of the parties;

(b) what is the extent of the equity, if one is established; and

(c) what is the relief appropriate to satisfy the equity”

In the case of Thorner vs. Major and Others[2009]UKL 18[2009] 1 WLR 776, Lord Walker stated as follows:

“This appeal is concerned with proprietary estoppel. An academic authority(Simon Gardner, An Introduction to Land Law (2007) p101) has recently commented:

“There is no definition of proprietary estoppel that is both comprehensive and uncontroversial (and many attempts at one have been neither).”

Nevertheless, most scholars agree that the doctrine is based on three main elements, although they express them in different terms; a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance (see Magarry & Wade, Law of Property, 7th edition (2008) para 16-001; Gray & Gray, Elements of Land Law, 5th edition (2009) para 9.2.8, Snell's Equity, 31st edition (2005) paras 10-16 to 10-19; Gardner, An Introduction to Land Law (2007) para 7.1.1)."

The burden was upon the Plaintiff to establish the said elements of proprietary estoppel. In the plaint, the Plaintiff stated as follows at paragraph 13:

"As an inducement for the Plaintiff to remain in the country the Defendants promised the Plaintiff that the suit property would be hers and that nobody would evict her despite the nullity proceedings with her husband and that all her bills would be catered for."

The Plaintiff repeated the same averments in her witness statement dated 24th February, 2015 which she adopted as part of her evidence in chief. In her plaint and witness statement, the Plaintiff did not provide the particulars of the promise that had been given to her by the Defendants in respect of the suit property. The Plaintiff did not state the date when the said promise was given; whether it was given once or over a period of time, whether the same was given by the Defendants together or separately and where the same was given. In her oral evidence, the Plaintiff stated as follows on this aspect of her case:

"On 23/5/2007, my ex-husband left the house which we occupied on the suit property with our son. I don't know where he went. I was shocked. From that day, he has not brought back my son to me. He took away with him half of the furniture in the house. The 1st Defendant assured me that all will be well. The Defendants assured me that my husband would be back with my son.I was contemplating leaving Kenya at that time. At this moment, I kept getting assurances from the defendants particularly from the 1st defendant that all will be well and that my ex-husband and son would come back. The defendants told me that the house I occupied on the suit property was my home and that I should continue occupying the same."

In cross-examination, the Plaintiff stated as follows:

"The defendants did not promise that they would give me the suit property. They assured me that I would continue to stay on the suit property.I have not mentioned when the promises were made to me. I cannot remember all the occasions when the defendants made promises and assurances to me.The defendants reassured me that the house which I occupied belonged to me. I have nothing in writing from the defendants that they promised to give me the house in question."

In their statement of defence, the Defendants have denied making any promise or giving the Plaintiff any assurance that they would give the Plaintiff the suit property. The Defendants did not give evidence. The 1st Defendant died on 4th March, 2016 before the hearing of the suit and was not substituted by his legal representative. The suit against the 1st Defendant has since abated and the Plaintiff's claim as against him extinguished.

In their submission, the Defendants' advocates had sought to rely on the affidavit sworn on 10th March, 2015 by the 1st Defendant as evidence of the fact that the Plaintiff and the Defendants did not enjoy cordial relationship and as such they could not have promised or assured the Plaintiff that they would give her the suit property. I am in agreement with the Defendants that an affidavit can be produced in evidence. In this case however, the production of such evidence is being done at the submission stage. The affidavit sought to be introduced in evidence was contested during the interlocutory proceedings and the Plaintiff sought and was denied an opportunity to cross-examine the 1st Defendant on the contents thereof. If the Defendants wanted to rely on the affidavit after the death of the 1st Defendant to establish certain facts, the Defendants had to formally seek the production of the document in evidence and lay a basis for the admission of the same.

The court cannot admit any new evidence at the submission stage from the bar. I wish to add that even if the affidavit was to be admitted in evidence, the court would have given it very little weight, the Plaintiff having been denied the opportunity to cross-examine the 1st Defendant on its contents.

M (DW1) who gave evidence for the Defendants denied that the Defendants had promised or assured the Plaintiff that she would be given the suit property. M insisted that the Plaintiff continued to occupy the suit property courtesy of the various court orders that had been made in her favour but not on the basis of any promise or assurance that the Defendants had made to her.

I am in agreement with the Plaintiff's submission that M who was the Plaintiff's ex-husband could not have known whether the Defendants had made any promise to the Plaintiff. M was not living with the Defendants and the Plaintiff on the same premises at the material time. From the foregoing, there is no direct evidence from the Defendants on the issue of the promise and assurance they are alleged to have made to the Plaintiff in respect of the suit property.

The burden of proof is however on he who alleges. Even if the Defendants failed to adduce any evidence in their defence on this issue, the Plaintiff still had a duty to prove her case. Section 107 (1) of the Evidence Act, Chapter 80 Laws of Kenya provides as follows:

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

In the case of Thorner vs. Major and Others(supra) Lord Walker who gave the leading judgment stated as follows:

"I would prefer to say.....that to establish a proprietary estoppel the relevant assurance must be clear enough. What amounts to sufficient clarity, in a case of this sort, is hugely dependent on context. I respectfully concur in the way Hoffmann LJ put it in Walton v Walton.....Hoffmann LJ stated at para 16:

"The promise must be unambiguous and must appear to have been intended to be taken seriously. Taken in its context, it must have been a promise which one might reasonably expect to be relied upon by the person to whom it was made."

I am not satisfied from the evidence on record that the Defendants made a clear and unambiguous promise or representation to the Plaintiff in respect of the suit property. The dates and the circumstances under which the alleged promise was made to the Plaintiff have not come out from the Plaintiff's evidence. The nature of the interest in the suit property which the Defendants promised to confer upon the Plaintiff is also not clear from the evidence on record. In her plaint and witness statement, the Plaintiff stated that the Defendants promised her that the suit property would be hers and that she will not be evicted therefrom. In cross-examination, the Plaintiff stated that the Defendants did not promise to give her the suit property and that what she was promised was continued occupation of the property. In the case of Thorner vs. Major and Others (supra) Lord Walker stated that whether a representation or assurance is sufficient to establish proprietary estoppel depends on the context in which it was made.

The context in which the alleged promise in respect of the suit property was made to the Plaintiff does not lend credence to the possibility of the same having been made. From the undisputed evidence on record, the Plaintiff entered the suit property in 1995 as the wife of the Defendants' son, M (DW1). Differences arose between the Plaintiff and M in the year 2004 and by the year 2006, their marriage had irretrievably broken down. M filed a suit against the Plaintiff in the Children's Court for the custody of their only child, A. M also instituted proceedings for the nullification of his marriage to the Plaintiff in the High Court. The proceedings for the nullification of the marriage between the Plaintiff and M was brought on the grounds that the Plaintiff was married at the time she purported marry M. The relationship between the Plaintiff and M was so acrimonious such that in October, 2006, the Plaintiff was thrown out of the suit property by M. It took the intervention of the court in the divorce proceedings for the Plaintiff to come back to suit property. The court permitted the Plaintiff to continue staying on the suit property pending

the determination of the said proceedings. In the said proceedings for the custody of A and nullification of the marriage between the Plaintiff and M, the Plaintiff also sought maintenance and division of matrimonial property.

On 23rd May, 2007, M moved out of the suit property with A and went to stay in rented premises. The Plaintiff was left behind in the suit property. The Plaintiff has claimed that it is after she was left alone on the suit property that the Defendants promised her that the suit property would be hers. It is inconceivable that the Defendants would have made such a promise to the Plaintiff in the circumstances that was prevailing at the material time. The Plaintiff did not tell the court what could have motivated Defendants to make the promise to her.

In her evidence the excerpt of which I have set out above, the Plaintiff stated that the Defendants had assured her that M would come back and that they would be reconciled. The court is left to wonder how the Defendants would have promised the Plaintiff that the suit property would be hers and at the same time assure her that M with whom she had occupied the suit property would come back and be reconciled with her.

I have also noted that the alleged promise and assurances were made to the Plaintiff before the determination of the child custody and nullity proceedings by the High Court. It is not contested that in the child custody proceedings, the Plaintiff sought from M among other reliefs, alternative accommodation. If at all, the Defendants who were the owners of the suit property had represented to the Plaintiff that they would give her the suit property and the Plaintiff had believed in that representation, I see no reason why the Plaintiff would have sought alternative accommodation. The Plaintiff pursued the issue of accommodation up to the Court of Appeal. In a judgment that was delivered by the Court of Appeal on 10th June, 2011 in Civil Appeal No. 20 of 2010, Papinder Atwal vs. Manjit Singh Amrit, the court ordered that the Plaintiff was continue to occupying the suit property where she was to stay with A whenever it was the Plaintiff's turn to reside with the child. Such order would not have been necessary if the Plaintiff had received a promise and an assurance from the Defendants that she will not be evicted from the suit property.

By seeking alternative accommodation, the Plaintiff acknowledged that the Defendants would seek possession of the suit property from her. This negates the alleged promise and assurances said to have been given to her by the Defendants. In her submission, the Plaintiff contended that a representation can be made through silence or inaction and that the Defendants having stood by and watched her spend money and time improving the suit property in the belief that the property was hers were estopped from asserting their right over the suit property. The case of, Ramsden vs. Dyson (1865) 1 H.L 129 was cited in support of this submission.

I am in agreement with the Plaintiff's contention that representation need not be explicit. It can be implied from conduct. My problem with this contention is that it was not pleaded. The Plaintiff's contention in the plaint is that the Defendants promised her that the suit property would be hers. There is no averment in the plaint that the Defendants stood by and watched the Plaintiff incurring expenses on the suit property in the mistaken belief that the property belonged to her and did nothing about it. The court can only base its decision on pleaded issues and not otherwise. See, NashonAroko M. Seme vs. John OsumbaOlum (2016) eKLR and Girdhari Lal Vidyarthi v. Ram Rakha (1957) EA 527.

Due to the foregoing, it is my finding that the Plaintiff has failed to establish that the Defendants had represented to her that they would give her the suit property or that she would continue to occupy the suit property as long as she wished. It is my finding that the Plaintiff's continued occupation of the suit property was on the basis of the various court orders which were made in her favour in the cases that she had with M and to some extent on the Defendants' magnanimity.

The other issue I need to determine is whether the Plaintiff relied on the alleged promise and assurances by the Defendants to her detriment. The Plaintiff was not a stranger to the Defendants. The Plaintiff entered the suit property with the permission of the Defendants as their daughter in law. The Plaintiff was evicted from the suit property by M but was reinstated by the High Court. M moved out of the suit

property and left the same in the sole occupation of the Plaintiff. The Plaintiff's right to continue occupying the suit property was extended by the Court of Appeal as I have mentioned above.

In the Court of Appeal judgment, M was ordered to pay for the maintenance of A whenever he was with the Plaintiff. The court was however silent on the maintenance of the suit property which belonged neither to the Plaintiff nor M. The Plaintiff has contended in the plaint that in reliance on the alleged promise and assurances by the Defendants, she spent considerable time, money and effort in improving the suit property by among others, extending the premises, installing new floors and carrying out interior designs and decorations.

In her evidence, the Plaintiff told the court that she bought new furniture for the suit property, built an extension and also renovated the interior of the property. In cross-examination, the Plaintiff admitted that she is not the one who built the extension to the suit property. She stated that the extension was built between 2004 and 2006 by the 1st Defendant. This was before the alleged promise was made to her. The evidence before the court shows that the Plaintiff carried out renovations to the suit property between the year 2012 and 2014. The invoices and receipts produced in evidence show that the Plaintiff carried out mainly electrical repairs and painting. As I have held above, there is no evidence that the Defendants promised to give the Plaintiff the suit property. The renovations which the Plaintiff carried out on the suit property could not therefore have been carried out in reliance on the alleged promise. In my view, the renovations which were carried out by the Plaintiff on the suit property were normal in nature and the Plaintiff as the occupant of the house could have carried out the same in any event. Neither the Defendants nor M had any obligation to repair and paint the suit property for the Plaintiff. The Plaintiff cannot therefore be said to have carried out the said repairs and renovation to her detriment.

The Plaintiff has also claimed that when differences arose between her and A that led to A moving out of the suit property, she made a decision to go back to the United Kingdom. The Plaintiff has contended that when the Defendants learnt of her decision, they prevailed upon her to stay in Kenya and with a view to induce her to stay on, the Defendants promised to give her the suit property. The Plaintiff has contended that following this promise by the Defendants, she decided to stay on in Kenya and in the process missed job opportunities in Dubai and England and a chance to start a new life.

In the child custody case, HCCC No. 6 of 2009, M S A vs. P K A, the court stated at page 30 of the judgment dated 1st July, 2009, that:

“The Defendant denied planning or even thinking of leaving Kenya and thought that Plaintiff's view that she intended to leave was unjustified.”

The Plaintiff did not place any evidence before the court showing that she had received any job offers in Dubai or England after her marriage to M broke down. There was also no evidence placed before the court by the Plaintiff showing that she had turned down any job offers. I am not satisfied therefore that the Plaintiff lost job opportunities in Dubai and England in reliance on the promise of a house that the Defendants are alleged to have given her.

In the final analysis, it is my finding that the Plaintiff has failed to establish the elements of proprietary estoppel. The plaintiff has not proved that the Defendants made a promise or a representation to her in respect of the suit property and that she relied on the said promise or representation to her detriment. My answer to the first issue is in the negative.

The second and third issues:

On the second issue, the Plaintiff has failed to establish that there is equity which has arisen as result of her relationship with the Defendants which should be satisfied. In the absence of such equity, the court need not determine how it should be satisfied. On the issue of costs, the same normally follow the event unless the court for good reason orders otherwise.

Conclusion:

In conclusion, it is my finding that the Plaintiff has not proved her case against the Defendants to the required standard. The Plaintiff's suit is dismissed accordingly. The Plaintiff is the mother of A who is the Defendants' grandson. In view of the nature of the dispute that was before the court and the relationship between the parties, each party shall bear its own costs of the suit.

I have noted that the Plaintiff has occupied the suit property for the last 22 years. In the circumstances, she may require some time to make arrangements to give vacant possession of the property to the 2nd Defendant. For that reason, I hereby order that the prevailing status quo shall be maintained for a period of ninety (90) days from the date hereof within which the Plaintiff shall be at liberty to vacate the suit property voluntarily.

Delivered and Signed at Nairobi this 3rd day of November, 2017

S. OKONG'O

JUDGE

Judgment read in open court in the presence of:

Mr. Gomba for the Plaintiff

Mr. Ouma for the Defendants

Kajuju Court Assistant