



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Kibuba v Kibuba; District Surveyor Murang'a & another (Interested Parties) (Environment and Land Case 104 of 2017) [2017] KEELC 3875 (KLR) (14 December 2017) (Ruling)

Mwenjeri Kibuba v Wilfred Warui Kibuba & 2 others [2017] eKLR

Neutral citation: [2017] KEELC 3875 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANGA

ENVIRONMENT AND LAND CASE 104 OF 2017

JG KEMEL, J

DECEMBER 14, 2017

BETWEEN

MWENJERI KIBUBA PLAINTIFF

AND

WILFRED WARUI KIBUBA DEFENDANT

AND

DISTRICT SURVEYOR MURANG'A INTERESTED PARTY

DISTRICT LAND REGISTRAR MURANG'A INTERESTED PARTY

RULING

1. It is a ruling on an application stated 26/9/17 seeking an Order to strike out the suit. It is supported by the Affidavit of the Defendant. The basis of the application is that the Plaintiff failed intentionally to disclose material facts to the Court like the existence of another suit touching on the subject matter. The suit being referred to is Land Dispute Tribunal [Land Dispute Tribunal] No. 32 of 2006 and HCCC No 88/2006. In the Land Dispute Tribunal, the Defendant was ordered to return 2.5 acres of land to the Plaintiff. Aggrieved by that decision the Defendant filed an appeal in the HCCC 88/2006. After the hearing of the appeal the High Court reversed the decision of the Land Dispute Tribunal. The reason for reversion was that the tribunal lacked Jurisdiction under the Land Dispute Act to determine a case relating to ownership of land.
2. To support this application, he annexed the proceedings in the Land Dispute Tribunal and the Order made by the Magistrate in the same cause and the Judgement in the High Court. On the basis of the said documents the Defendant submitted that the suit is barred by Limitations and the matters raised were Resjudicata.



3. In respect to issue of Resjudicata, the case in the High Court relied by the Defendant made a finding which I agree that the Land Dispute Tribunal and the Magistrate Court acted without Jurisdiction. Both were therefore not a competent Court and did not determine the matter properly before them.
4. In respect to the issue of time bar, the applicant is faced with a case alleging fraud against him. The circumstances giving rise to this allegation is that both the Plaintiff and the Defendant became registered owners of parcels of land in Succession known as LOC.14/Kairo/1023 and LOC.14/Kairo/885 respectively. The Defendant divided 1 LOC.14/Kairo/1023 equally into his family and that of the Plaintiff. Under this heading there is no dispute arising. The dispute arises out of the land Registered in the Plaintiffs name being LOC.14/Kairo/885 which the Defendant allegedly subdivided and registered to himself allegedly in excess of his entitlement 2.5 acres without the Plaintiffs consent. It is noteworthy that the lands allegedly registered in the names of the Plaintiff and Defendant respectively were ancestral land held in trust for the beneficiaries of such lands. It appears that the beneficial interest in the land held by the Defendant was settled with finality. The beneficial interest held in the land held by the Plaintiff is the subject of this case in which it is alleged that the Defendant was engaged in fraudulent acts.
5. In such instances it is necessary for the Court to make a finding with finality upon evidence on matters not limited to;-
 - a] Circumstances under which the Defendant subdivided land registered in the name of the Plaintiff.
 - b] The terms of the agreement in the two families as alleged by the Defendant to subdivide Land registered in the name of Plaintiff.
 - c] The total acreage of the land registered in the name of the Plaintiff.
 - d] The total acreage of the land after the subdivision held by the Plaintiff and Defendant.
 - e] The Date when the Plaintiff became aware of the fraud allegedly committed by the Defendant, if any.
 - f] Whether the Defendant is entitled to plead limitation in a case involving trust in land, where he is a beneficiary.
6. Prior to this application the Defendant had filed a Preliminary Objection on the twin issues of Resjudicata and time bar. The present application as filed and on the submissions of Counsel had dealt with the issues raised in the Preliminary Objection. This Court after hearing the Preliminary Objection on the above twin issues on 13/7/17 dismissed it with costs.
7. Given the elaborate findings in the ruling of the Court on the twin issues it may not have been necessary in the Courts view for the Defendant to file the present application. In the circumstances the application is dismissed with costs to the Respondent.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 14TH DAY OF DECEMBER, 2017

J G KEMEI

JUDGE

