



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.233 OF 2013

KADZO MKUTANO.....PLAINTIFF

=VERSUS=

1. MUKUTANO MWAMBOJE KADOSHO

2. ANTHONY CHARO KAHINDI

3. KAINGU NGUNE.....DEFENDANTS

J U D G M E N T

1. In his Complaint dated 17th December, 2013, the Plaintiff averred that at all material times, she was the wife of the 1st Defendant and consequently a joint owner of parcel of land number Kilifi/Chembe/237 (the suit property); that the 1st Defendant has been selling the family land without consulting her and that on 28th May, 2013, the 1st Defendant entered into a sale agreement with the 2nd Defendant for the sale of the suit property without her consent.

2. The Plaintiff is seeking for a declaration that the 1st Defendant is holding the suit property in trust of and for the benefit of the 1st Defendant's family including the Plaintiff; an order that the sale transaction concerning the suit property is void *ab initio* and for a permanent injunction.

3. Although the Defendants entered appearance through the firm of Katsoleh and Co. Advocates, they never filed a Defence.

4. The matter proceeded for formal proof on 25th May, 2016.

5. The Plaintiff, PW1, informed the court that she was married to the 1st Defendant under Giriama customary law and that they are blessed with five children.

6. According to the evidence of PW1, the 1st Defendant has a second wife with whom they have eight children; that the suit property is their matrimonial property and that she has lived on the property since she was married.

7. PW1 informed the court that the 1st Defendant has sold a portion of the land to the 2nd and 3rd Defendants; that she was never consulted when the suit property was sold and that the suit property is the only place they call their home.

8. PW1 produced in evidence the agreement dated 28th May, 2013 between the 1st Defendant and the 2nd Defendant.
9. The agreement shows that the 1st Defendant sold to the 2nd Defendant three acres out of the suit property for Kshs.450,000.
10. The agreement does not show if the Plaintiff was consulted before the sale.
11. Section 28 of the Land Registration Act recognises spousal rights over matrimonial property as an overriding interest.
12. Spousal consent, is therefore required before a spouse can sell matrimonial property. In the absence of such a consent, the sale becomes null and void.
13. Considering the uncontroverted evidence before me, I find that the Plaintiff has proved her case on a balance of probability.
14. For those reasons, I allow the Plaintiff's Plaint dated 17th December 2013 in the following terms:-

(a) A declaration be and is hereby issued that parcel of land known as Kilifi/Chembe/237 registered in the name of the 1st Defendant is held in trust of and for the benefit of the 1st defendant's family, including the Plaintiff.

(b) An order be and is hereby issued that all previous purported sale transactions concerning the parcel of land known as Kilifi/Chembe/237 are null and void.

(c) A permanent injunction be and is hereby issued restraining the 1st Defendant by himself or agents, servants or any person or entity claiming interest through him from selling, alienating, disposing or assigning parcel of land known as Kilifi/Chembe/237.

(d) The Defendants to pay the costs of the suit.

Dated, signed and delivered in Malindi this 22nd day of **September**, 2016.

O. A. Angote

Judge