



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 40 OF 2016

JANE KAGIO KAMARA.....PLAINTIFF

VERSUS

MURIITHI KAMARA.....DEFENDANT

JUDGMENT

The plaintiff is wife to the defendant who is registered as the proprietor of land parcel No. 145 KAMUIRU which is a village plot. The plaintiff and her children have lived on the said plot (the suit plot) for over 40 years. The defendant has another wife with whom they live in Karaba area of Machakos County. It is the plaintiff's case that the defendant holds the suit plot in trust for her. The defendant has recently started threatening to evict the plaintiff and sell the suit plot. That has necessitated the filing of this suit in which the plaintiff seeks the following orders:-

(a) A declaration that the defendant holds plot No. 145 KAMUIRU in trust for the plaintiff and an order be made to rectify the register to read the names of the plaintiff.

(b) Costs of the suit.

The defendant was served on 4th April 2016 with copies of summons to enter appearance, plead, verify affidavit and other documents. However, he has neither entered appearance nor filed any defence and on 21st June 2016 the Deputy Registrar at this Court entered interlocutory judgment against him and on 25th October 2016, the case came up for hearing before me.

The plaintiff's testimony is that she is the second wife to the defendant and for the last 60 years, she has lived on the suit plot which is registered in the names of the defendant. The defendant has however moved to live in Mwea and his daughters have been visiting the land threatening her and her children. She therefore filed this suit. She added that the suit plot was given to the defendant by the clan.

The defendant having not entered appearance nor filed any defence to this claim, all that this Court can rely on is the un-controverted evidence of the plaintiff. The claim is based on trust and the onus is on the plaintiff to lead evidence to prove that the defendant holds the suit plot in trust for her and her children. This is because the Court will not imply a trust except to give effect to the intentions of the parties – **MWANGI MBOUHO VS GACHIRA WAITIMU 1986 K.L.R 171.**

In the circumstances of this case, the plaintiff's evidence that the suit plot was given to the defendant by clan to hold in trust for her and the family has not been controverted. The plaintiff is also in occupation thereof together with her children while the defendant lives elsewhere with another wife. This Court has been asked to make a declaration that the defendant holds the suit plot in trust for the plaintiff and to order that the register be reflected accordingly. On the un-controverted evidence before me, I am

satisfied that the plaintiff has proved her case against the defendant on the required standard.

Ultimately therefore, judgment is entered for the plaintiff against the defendant in the following terms:-

1. A declaration that the defendant holds plot No. 145 KAMUIRU in trust for the plaintiff and an order that the register be rectified to read that the defendant is registered as owner thereof in trust for the plaintiff.

2. No order as to costs.

B.N. OLAO

JUDGE

11TH NOVEMBER, 2016

Judgment dated, delivered and signed in open Court this 11th day of November 2016

Mr. Macharia for Mr. Ngangah for Plaintiff present

No appearance for the Defendant

Right of appeal explained.

B.N. OLAO

JUDGE

11TH NOVEMBER, 2016