



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

IN THE HIGH COURT AT NYERI

Environment And Land Case No. 82 Of 2013

L W K.....PLAINTIFF

VS

D K K.....DEFENDANT

JUDGMENT

PLAINTIFF'S CLAIM

The plaintiff claims that defendant is the registered owner of Land Parcel No. LOC. [particulars withheld] and was the registered owner of land parcel LOC [particulars withheld] which he inherited from his parents. The plaintiff is married to the defendant under Kikuyu Customary Law and they have six issues of marriage who are minor children .The plaintiff and the defendant set up their matrimonial home on land parcel number LOC.[particulars withheld] and they developed and cultivated crops on the two parcels of land which formed the source of economic livelihood for the family. After the marriage the defendant became a habitual drunkard and totally neglected his family. He sold land parcel number LOC. [particulars withheld] and transferred it to M K W and F N and used the sale proceeds for drinking and has also sold and is in the process of transferring land parcel number LOC.[particulars withheld].

The sale of land parcel number LOC.[particulars withheld], and sale and threatened transfer of land parcel number LOC. [particulars withheld] will make the plaintiff and the issues of marriage destitute, homeless and with no source of income. The plaintiff further avers that her developments and cultivation of the two parcels of land would go to waste. She avers that in a bid to protect her interest in two parcels of land she lodged cautions on the suit lands but caution on land parcel number LOC.[particulars withheld] was removed and the land transferred to M K W and F N K and therefor the plaintiff is apprehensive that the caution on land parcel number LOC.[particulars withheld] will be removed and the land transferred and there is already an agreement for the sale of land parcel number LOC.[particulars withheld] dated 2nd June 2010 between the defendant and L M N .

The plaintiff avers that her development and cultivation on the two parcels of land as a spouse gave her a spousal interest over the property which is an overriding interest over the title registered. The plaintiff avers that if the defendant proceeds with the sale and transfer of land parcel number LOC.[particulars withheld] the plaintiff and the issues of marriage will suffer irreparably. The plaintiffs claim against the defendant is for a declaration of the suit properties are matrimonial property and that she has spousal right as an overriding interest over the title registered.

DEFENCE

The defendant was served with summons to enter appearance and plead and having failed to enter appearance or file defence within the stipulated time by law interlocutory judgment was entered against the defendant for plaintiff.

PLAINTIFF'S EVIDENCE

Plaintiff appeared for formal proof on 23/1/2014 and testified she got married to the defendant in 1993 under Kikuyu Customary Law and their marriage was blessed with six issues of marriage. The plaintiff and the defendant set up their matrimonial home on land parcel number LOC. [particulars withheld] and registered in the name of the defendant and the defendant was also registered owner of land parcel number LOC.[particulars withheld] both parcels of land inherited from his parents.They developed and cultivated crops on the two parcels of land which formed the source of economic livelihood for the family.

After the marriage the defendant became a habitual drunkard and totally neglected her and the issues of the marriage. He sold land parcel number LOC.[particulars withheld] and transferred it to M K W and F N and used the sale proceeds for drinking and has sold and he is in the process of transferring land parcel number LOC.[particulars withheld].

The sale of land parcel number LOC.[particulars withheld] and the sale and threatened transfer of land parcel LOC.[particulars withheld] will make her and the issues of marriage destitute, homeless and with no economic means.

Plaintiff's development and cultivation of the two parcels of land would go to waste if the defendant transferred all the parcels of land. In a bid to protect her interest in the two parcels of land she lodged cautions on the two parcels of land but caution on land parcel No. LOC. [particulars withheld] was removed and the land transferred and there is already an agreement for the sale of land dated 2nd June 2010 between the defendant and L M N for the sale of land parcel number LOC.[particulars withheld].

Her development and cultivation on the two parcels of as a spouse gave the plaintiff matrimonial interest in the property which was an overriding interest over the registered title. If the defendant proceeded with the sale and transfer of land parcel number LOC. [particulars withheld] the plaintiff together with the issues of marriage would suffer irreparably.

The plaintiff's claim against the defendant was for a declaration that the suit land are matrimonial property and that she has overriding interest over the registered title. She also prayed for the defendant being restrained by a permanent injunction from transferring, alienating or disposing land parcel number LOC. [particulars withheld] and that she together with the defendant be registered as joint owners of land parcel No. LOC[particulars withheld] . Alternatively she prayed that land parcel No. LOC. [particulars withheld] be subdivided into two equal shares and that she together with the defendant get a share each. The plaintiff further prayed for the costs and interest of the suit.

FINDINGS AND DECISION

Having heard the plaintiff in the absence of the defendant who was served but did not appear and never filed defence. I do find that the plaintiff was legally married to the defendant under Kikuyu customary law and their marriage was blessed with 6 children. The plaintiff and the children live in the disputed land and have developed the same as a source of their livelihood.

I do find that the plaintiff has proved that she has an overriding interest in the form of spousal rights over the property which I do consider as matrimonial property pursuant to the provision of section 28 (a) of the Land Registration Act No. 3 of 2012.

The upshot of the above is that this court declares that Land Parcel No. LOC [particulars withheld] is matrimonial property and that the plaintiff has overriding interest over the registered title and the defendant is hereby restrained by a permanent injunction from trespassing alienating or disposing the said

parcel of land. Prayer (b) of the plaint is dismissed. There be no order as to costs.

SIGNED AND DATED AT ELDORET THISDAY OF..... 2015

ANTHONY OMBWAYO

JUDGE

DELIVERED AND SIGNED AT NYERI THIS 6TH DAY OF FEBRUARY ,2015

LUCY WAITHAKA

JUDGE