



REPUBLIC OF KENYA

INTHE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 10 OF 2013

HARON MUNAKU KINGORI ::: PLAINTIFF

VERSUS

JOSEPH GICHUKI ::: DEFENDANT

J U D G M E N T

INTRODUCTION.

1. The plaintiff is father in-law to the defendant. The defendant is sued in his capacity as legal representative of the estate of his late mother **Wangechi Ndungu** (deceased). The deceased was the owner of plot No. 236 Kapomboi Settlement Scheme (suit land).

PLAINTIFF'S CASE.

2. The plaintiff testified that the deceased approached him to help her recover the suit land which was in danger of being taken away from her by the Settlement Fund Trustee. The plaintiff agreed to sponsor her financially. The deceased went and filed a claim at Kwanza Land Disputes Tribunal against two persons. The dispute was heard and the tribunal ruled in favour of the deceased. The defendants moved to the High Court seeking to have the tribunal decision quashed. The application in the High Court was dismissed. The suit land reverted to the deceased.

3. The plaintiff and the deceased entered into an agreement in which the deceased agreed that the plaintiff do recover his costs which stood at Ksh. 350,000/= from her land. The deceased then gave the original documents relating to the land to the plaintiff. The plaintiff took possession of the suit land in 2006 and constructed a semi permanent house on it. While the plaintiff was in hospital, the defendant leased out the entire suit land to a third party. The suit land is 5 acres. It is on this basis that the plaintiff filed this suit seeking a permanent injunction against the defendant or his agents restraining him from interfering with quiet enjoyment of the suit land. He is also seeking a declaration that he is a beneficial owner of the suit land.

DEFENDANT'S CASE.

4. The defendant testified that the suit land belongs to the deceased. The suit land was given to her by the Settlement Fund Trustee. The deceased was residing at Ole Nguruoni in Nakuru County. She later came to learn that some land officials from the Settlement Fund Trustee had given her land to some other people. The deceased was advised to file a suit against the person who had been illegally given her land. The deceased filed a claim against the one who had been given the land. The deceased succeeded in her claim. The suit land reverted to the deceased. The deceased died in June, 2007. The defendant filed for succession and obtained grant of letters of administration. As he was pursuing registration of the suit land,

he was served with summons from the plaintiff who had sued him. He denied any knowledge of the plaintiff assistance to his deceased mother.

ANALYSIS OF EVIDENCE.

5. The plaintiff produced three documents from the Settlement Fund Trustee office. The first document is a temporary occupation certificate dated 14/11/1974. The second document is a letter of undertaking in which the Settlement Fund Trustee offered to move the deceased from plot No.218 to another plot. The third document is a receipt issued on 8/12/1983 in which the deceased paid Ksh. 625/= being 10% deposit for plot No. 236 (suit land).

6. The plaintiff also produced an agreement [Exhibit 2] dated 29/11/2004 in which the deceased agreed to refund the plaintiff's expenses of Ksh. 350,000/=. He also produced a bundle of receipts for expenses incurred [Exhibit 1].

7. The claim by the deceased was filed in the tribunal in 2003. The tribunal gave its verdict on 13/5/2003. An application for judicial review was filed in the High Court on 21/12/2004. This application was dismissed by the High Court on 20/9/2005. The whole dispute therefore took about 2 years to conclude. The plaintiff produced a bundle of receipts for lawyer's fees and filing fees amounting to Ksh. 23,000/=. Of all these receipts only three of them were issued prior to 29/11/2004 the date of the agreement in which it is alleged that the plaintiff had spent Ksh. 350,000/=. These three receipts add up to Ksh. 8,500/=. All the other receipts were issued after 29/11/2004.

8. A keen look at the agreement of 29/11/2004 shows that the figure “*gharama elfu mia tatu hamsini*” was inserted later. If indeed the plaintiff had spent Ksh. 350,000/= as at 29/11/2004, what about the monies he paid after 29/11/2004? There is no way the plaintiff would have spent Ksh. 350,000/= on a matter which was before a tribunal. We know the filing fees before the tribunals which are now defunct. The deceased only undertook to repay expenses after the land had been recovered. The agreement itself is clear on that. The figure in words of Ksh. 350,000/= was inserted later. Even if it was inserted on the day of the agreement, then the same is unconscionable and was only meant to defraud the deceased who did not know how to read. There is evidence from PW3 **Mary Muthoni Kingori** daughter of the plaintiff who during cross examination said that she is the one who explained the contents of the agreement to the deceased. This witness is one of those who signed the agreement.

9. The plaintiff has been utilizing the 5 acres from 2006 to 2013 when the defendant leased it out to a third party. This is a period of six years. If he indeed assisted the deceased, then he has already recovered whatever he spent. I therefore find that the plaintiff's suit is misconceived. The same is hereby dismissed with costs to the defendant.

[Dated, signed and delivered at Kitale on this 19th day of December, 2014.]

E. OBAGA.

JUDGE.

In the presence of plaintiff and defendant.

Court Clerk – Kassachoon.

E. OBAGA.

JUDGE.

19/12/2014.