



Kamau (Suing as personal representatives of the Estate of Ernest Kamau Kinuthia (Deceased) v Kinuthia (Environment & Land Case E179 of 2023) [2024] KEELC 4019 (KLR) (30 April 2024) (Judgment)

Neutral citation: [2024] KEELC 4019 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E179 OF 2023**

**EK WABWOTO, J
APRIL 30, 2024**

BETWEEN

JANE WAIRIMU KAMAU (SUING AS PERSONAL REPRESENTATIVES OF THE ESTATE OF ERNEST KAMAU KINUTHIA (DECEASED)) PLAINTIFF

AND

HEZEKIAH KIUGU KINUTHIA DEFENDANT

JUDGMENT

1. The Plaintiff instituted this suit vide a plaint dated 14th August, 2003 seeking for the following reliefs;
 - a. A declaration that the Defendant holds three (3) acres out of the land parcel No. Ondiri Farm Scheme/68 in trust for the Plaintiff.
 - b. An Order that the Defendant excises three (3) acres or three (3) acres be excised out of the suit land and the same be transferred to the Plaintiff.
 - c. An Order cancelling the original title and issue of two fresh titles and another to the Defendant.
 - d. Mense profits.
 - e. Costs to be borne by the Defendant.
 - f. Any other or further relief that this Honourable Court may deem apt and just to grant.
2. The suit was contested by the defendant who filed a Defence dated 14th October 2003.



3. It was the Plaintiff's case that the Plaintiff purchased land parcel number Ondiri Farm Scheme/68 measuring approximately twelve (12) acres jointly with his brother, the Defendant and that the Plaintiff's share was three (3) acres of the twelve (12) acres jointly purchased.
4. The Plaintiff averred that it was agreed that the parcel of land be registered in the name of the Defendant which was done and that the Defendant was to hold three (3) acres in trust for the Plaintiff but the Defendant later declined and or refused to transfer the said three acres to the names of the Plaintiff despite several requests to do so.
5. The Defendant's case was set out in his statement of defence where it was averred that he bought 8 acres from Ondiri Farm Scheme at a total sum of Ksh 5,128/- and a further 4 acres from Harrison Njoroge and Kimani Wairi to make a total of 12 acres and was issued with a title deed on 18th December 1987.
6. During trial, the Plaintiff testified as the sole Plaintiff's witness. She adopted the witness statement that was filed on 30th September 2014 together with the Plaintiff's bundle of documents dated 25th September 2014 as her evidence in chief. She also reiterated the averments made in her plaint and urged the court to grant her the prayers sought.
7. The Defendant never called any witness nor attended the trial session despite service.
8. The court has considered the pleadings filed herein together with the oral and documentary evidence that was adduced and is of the view that the main issue for consideration is whether the Plaintiff has proved her case to the required standard to warrant the grant of the reliefs sought.
9. The Defendant only filed a statement of defence but never called any witness to controvert the allegations made against him by the Plaintiff. Therefore, the Defendant defence remains mere allegations and the Plaintiff testimony was not rebutted. See the case of Billsah Matiangi –Vs- Kisii Bottlers Limited & Another (2021) eKLR, where the court held that: -

“Where a Plaintiff gives evidence in support of her case, but the Defendant fails to call any witness in support of its allegations, then the Plaintiff's evidence is uncontroverted and the statement of defence remains mere allegations”
10. However, uncontroverted evidence is not automatic evidence and the Plaintiff still has an obligation to prove her case to the required standard of probabilities.
11. In the instant case, the Plaintiff adduced cogent evidence demonstrating how the property was purchased and how the parties agreed to have the same registered in the names of the Defendant in trust for the Plaintiff. The Plaintiff also produced documentary evidence and records of previous proceedings before the District Land Tribunal Elders dated 30th March 1992, ruling by the District Land Tribunal Elders certified on 5th June 1998 and copies of the proceedings and judgment in High Court Civil Appeal No. 202 of 1999 which indeed supported the Plaintiff's case.
12. The evidence adduced by the Plaintiff was not controverted and the court is satisfied that the Plaintiff has proved her case to the required standard.
13. The next issue for consideration is whether the Plaintiff is entitled to the reliefs sought. The Plaintiff sought for several reliefs as numbered in her plaint and this Court having found that the Plaintiff's case has been proved to the required standard, it shall proceed to grant the prayers sought.
14. In respect to costs, the same is at discretion of the court. However, having considered that the dispute herein relates to family members, this Court directs that each party to bear own costs of the suit.



Final orders

15. In conclusion, the court is satisfied that the plaintiff has proved her case to the required standard. In the circumstances, judgment is hereby entered in favour of the Plaintiff as against the Defendant in terms of prayers (i), (ii) and (iii) of the Plaint dated 14th August 2003. Each party to bear own costs of the suit.
16. It is so ordered.

Dated, Signed and Delivered virtually at Nairobi this 30th day of April 2024.

E. K. WABWOTO

JUDGE

In the presence of:-

N/A for the Plaintiff.

N/A for the Defendant.

Court Assistant: Caroline Nafuna.

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