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**ENVIRONMENT AND LAND
COURT REINFORCES PARENTS'
FREEDOM TO DEAL WITH
THEIR PROPERTY AS THEY
DEEM FIT WITHOUT THE NEED
TO CONSULT THEIR CHILDREN**

LEGAL ALERT

MAY 2023

Environment and Land Court reinforces parents' freedom to deal with their property as they deem fit without the need to consult their children

The Environment and Land Court (Munyao Sila J) sitting in Kisii (“the ELC”) in the recently concluded case of *Oganga & Another v Orangi & 3 Others [2023] KEELC 16348 (KLR)* held inter alia that there is no law granting children the right to compel their parents to consult them, when dealing with their land.

In this case, the 1st Defendant was registered as the proprietor of the disputed parcel of land, Title Number West Kitutu/Mwakibagendi/1395. On 9th November 2010, the 1st Defendant subdivided the said land, after which he sold the subdivided parcels to the 1st Plaintiff and the 2nd Plaintiff.

Consequently, the 2nd and 3rd Defendants (who were sons of the 1st Defendant) filed proceedings against their father before the Marani Land Disputes Tribunal (“the Tribunal”), which held in their favour, and ordered the cancellation of the subdivisions thereby reverting ownership of the disputed land to the 1st Defendant.

Notably, the proceedings before the Tribunal were instituted without the knowledge of the 1st and 2nd Plaintiffs, who had acquired titles to the respective subdivided parcels of land. This necessitated the current suit at the ELC, where the Plaintiffs sought for inter alia, nullification of the orders of the Tribunal, on the basis that they were condemned unheard, and asserting that they were innocent purchasers for value of the said parcels of land.

On their part, the 2nd and 3rd Defendants brought a Counterclaim against the Plaintiffs, contending that the disputed land was held in trust for them, as the same was ancestral land.

The main issue before the ELC was whether the 1st Defendant held title on his own behalf or as trustee for his dependants.

The 2nd and 3rd Defendants argued that since deceased

father was given the disputed land by their grandfather, the property was ancestral land and therefore, was held in trust for them.

While holding in favour of the Plaintiffs and dismissing the 2nd and 3rd Defendant's claim, the ELC in addition to nullifying the Tribunal's decision for lack of jurisdiction, also held that the 2nd and 3rd Defendants had failed to provide sufficient evidence, to enable the Court to conclude that the disputed land was ancestral land.

Most importantly, the learned Judge observed that according to the Land Register, the disputed land was exclusively held by the 1st Defendant, meaning that he could deal with the property as he wished, pursuant to the right guaranteed by section 24 (a) of the Land Registration Act 2012. The ELC therefore held that the land was his free property, which was not subject to any trust or ancestral rights.

Castigating the children, the learned Judge stated that:

“... the 2nd and 3rd Defendants had no right to compel the 1st Defendant to subdivide his land in a certain way. Neither can they purport to attempt to reverse a sale that was freely entered into by their late father. The property was never held in their trust...”

... It is time that children stopped having a notion, that what belongs to their parents also belongs to them in equal measure, and that their parents must subdivide and distribute land to them in a particular manner.

... The conduct of the 2nd and 3rd Defendant was, and remains, shameful. It is abominable. They relentlessly hounded their father; they demanded that he distributes the land in the form that they themselves wanted; even when their father gave them some land, they complained that it was too little; they sued their father before the Chief, the clan, and before the tribunal; they failed to give their father peace. This is despite the fact that it was their father who took them to school and educated them

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up to University level and made them to be what they are today. They are thankless. They have forgotten that their father took care of them when they were wobbly and helpless tots and raised them to be responsible adults..."

Import of the Decision

The decision buttresses the principle encapsulated under section 24 (a) of the Land Registration Act 2012, which vests a person, registered as the proprietor of land, with absolute ownership of the land, together with all rights and privileges belonging or appurtenant to the land.

The decision therefore reinforces that ownership and control over property belongs to the rightful owner and not to their children or other family members, who may have expectations or demands that conflict with the wishes of the owner.

The decision highlights that children should not assume that they have an automatic entitlement to their parent's property. The decision emphasizes the importance of respecting property rights under the law, regardless of father relationships.

Disclaimer

This alert is for informational purposes only and should not be taken to be or construed as a legal opinion. If you have any queries or need clarifications, please do not hesitate to contact Pamella Ager, Managing Partner, (pamella@oraro.co.ke) and Blenda Nyahoro, Associate, (blenda@oraro.co.ke) or your usual contact at our firm, for legal advice.



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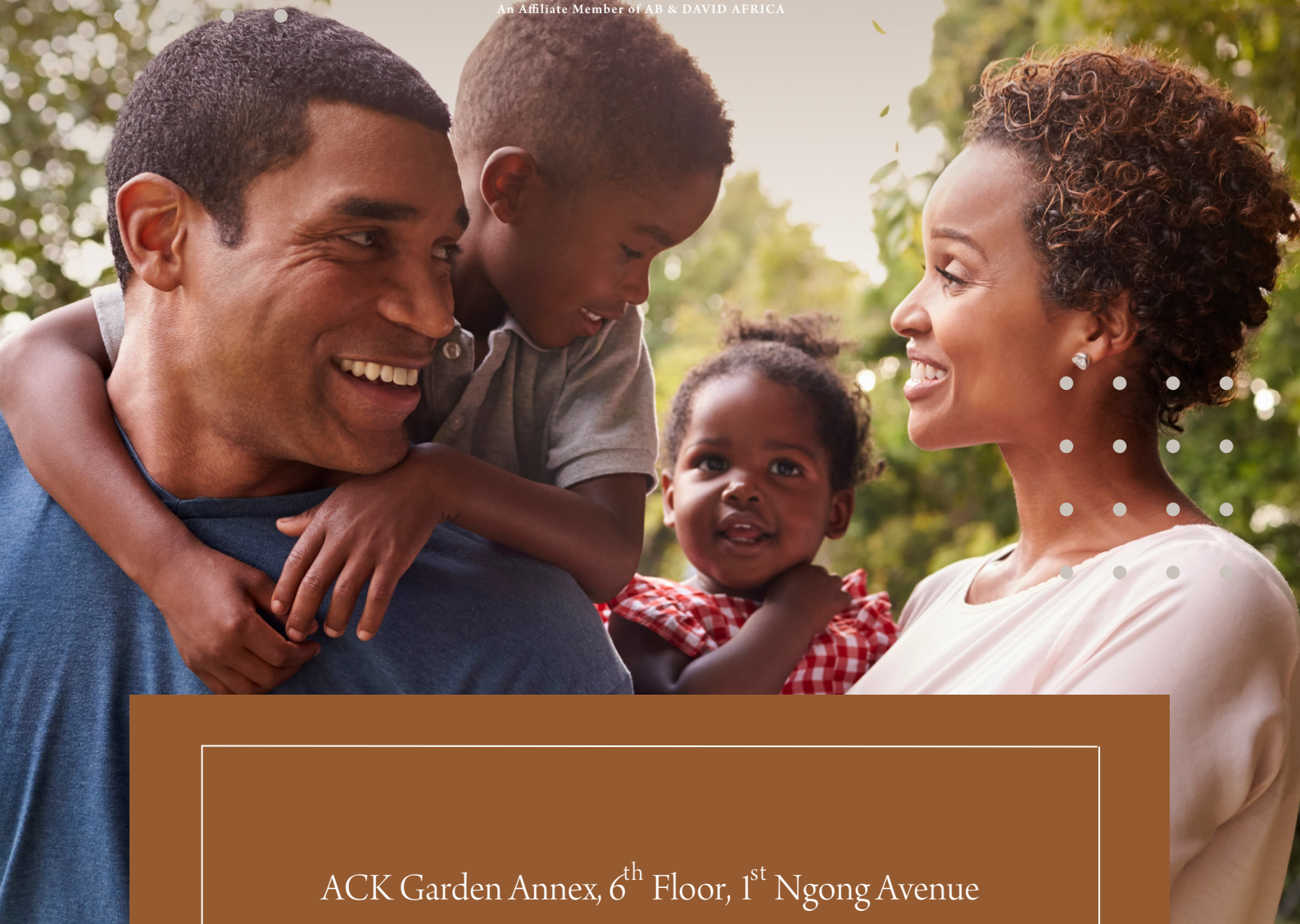
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