



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

ELC. CASE NO. 91 OF 2010.

PIUS WAKOLI KISING'ANI.....PLAINTIFF

VERSUS.

WILLIAM MBANGA NYUKURI.....1ST DEFENDANT

JOTHAM MUNDILA MUFUPI.....2ND DEFENDANT

JUDGMENT

[1]. The plaintiff claim in this case is for an order for eviction and permanent injunction barring the defendants from interfering with the plaintiffs enjoyment and use of LR No. Kimilili/Kamukuywa/2267.

[2]. The plaintiff state that he purchased 4 acres out of LR Kimilili/Kamukuywa/1426 in a Public Auction. That the defendants who were in occupation of the said land as tenants at the time of purchase refused to move out of the said land and instead filed a claim against the plaintiff in the Kamukuywa Land Disputes Tribunal which dismissed their claim. They then filed an appeal in the Provincial Appeals Lands Tribunal, the tribunal dismissed the claim. In the meantime Judgment of the tribunal had been adopted as the Judgment of the Court vide Kimilili RMCC Misc. Application No. 20 of 1977. The dismissal by the Western Land Appeals Tribunal was appealed against in the High Court Bungoma vide High Court Civil Case No. 66 of 1999. The said appeal was dismissed. As a result the plaintiff brings this case for eviction and for a permanent injunction against the defendants.

[3]. The defendant filed their defence and alleged that the suit land is still registered in the names of Joseph Werunga Natembeya and that it has not undergone subdivision. They asked for the plaintiffs case to be dismissed. The 2nd defendant wrote a statement and stated that he bought a portion of 2½ acres out of the suit land and the 2 acres were bought by the 2nd defendant. He stated that he paid Kshs.32,000/= and that the second defendant paid Kshs.40,000/=. He alleged that the deceased owner of the land had given to them possession and that they have occupied the same and effected developments thereon without any interference. They called witnesses who gave evidence who said they knew the defendants purchased the land from the owner Joseph Werunga Natembeya.

[4]. The issue for determination is whether the plaintiff is entitled to his claim for eviction and injunction against the defendants.

[5]. There is absolutely no dispute that the defendants entered the Land as purchasers on 5/4/88 and that they were allowed to occupy and use the land. A perusal of the copy of the register filed in Court shows that the land in question was registered on 24/11/86. That a charge over the land was registered on 23/12/86. On 28/6/1992 another charge was registered. Then 20/7/95 a caution in favour of Patrick Wanjala Natembeya was registered claiming interest as a beneficiary. On 23/10/95 a caution was

registered in favour of Pius Kisiang'ani Wakoli claiming interest as a purchaser.

[6]. This land is agricultural land. The defendant appear not to have made any steps to have the land they claim to have purchased in their names. The charges by the bank came in when there was no inhibition on the title. The cautions were registered after the charges by the bank were registered. It would appear that the charger was unable to repay the loan and the bank exercised its power of sale. The plaintiffs then purchased a portion of the suit land from the resultant auction.

[7]. The sale of a portion of this land by the registered owner to the defendants was void for lack of land control consent since the land is agricultural. There is nothing to show that the chargee was ever aware of the interests of the defendants. The charge by the bank became an overriding interest of the suit land. The bank was well within its powers to realize the security to recover its charge.

[8]. I find that the plaintiff who purchased the suit land was bona fide. He is entitled to evict the defendants who have who have occupied this land Kimilili/Kamukuywa/2267 a subdivision of land parcel number Kimilili/Kamukuywa/1426.

[9]. The defendants have filed several suits, all of them have been dismissed by various courts. They shall now move out of the land parcel Kimilili/Kamukuywa/2267 within 30 days failing which they will be evicted by the plaintiff with the help of the Court broker and officers of the nearest police station. An injunction shall issue against them from entering and/or interfering with the plaintiffs land aforesaid. If they move out within 30 days from the date hereof, each party shall bear their own costs.

If they do not move out within that period, the plaintiffs shall have the costs of the suit and costs of eviction.

It is so ordered.

Judgment read in open Court in the presence of Counsel.

Dated at Bungoma this 22nd day of February, 2018.

S. MUKUNYA

JUDGE

In the presence of:

Joy: Court Assistant

Isye: For Mr. Khakula - Present

No appearance for Mr. Kraidu