



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
ENVIRONMENT AND LAND CASE NO. 108 OF 2013
JOHNSTONE OUKO.....PLAINTIFF
VERSUS
MESHACK OUKO.....DEFENDANT

JUDGMENT

[1]. The plaintiff in this case is the father of the defendant. He is the registered owner of LR. No. W. Bukusu/S. Mateka/622 measuring approximately 2.4 ha. The Plaintiff and the defendant live on the suit land.

[2]. The plaintiffs case is that he has allocated his son a land in Kisa location of Kakamega District land parcel Kisa/Mushiangubu/697. A land that the defendant has refused to move to, and that, the same awaits the defendants occupation.

[3]. The plaintiff alleges that the defendant has been rude to him, disrespectful and threatens to beat the plaintiff. Further, that the defendant alleges that his father wants to rape his wife. He alleges that his father kills people. The plaintiff states that he has tried to have the dispute resolved by the clan but the defendant has completely refused to go to Kisa.

[4]. The plaintiff states that his son is 45 years old that he is an adult born in 1972. He states that he educated him through Primary School to Mukumu Boys High School where he burnt the School when he was in Form 3. He was expelled from Mukumu and his father took him to Maseno Secondary where he learnt Carpentry and Joinery. The plaintiff opened a Workshop for him at Shibale near Mumias and the defendant failed to run it. The defendant retired as a storekeeper in Mumias Sugar Factory and he went home with him where he put up a workshop with Ksh.100,000/=, he bought tools and gave the workshop to the defendant who once again failed to run it.

The plaintiff therefore wants the defendant to go to Kisa location in Butere which is the ancestral land and occupy a portion of land now clearly demarcated as averred by the plaintiff. The plaintiff produced a bundle of letters from the Chief showing various complaints against the defendant.

[5]. The defendant filed a defence on 30/11/2011. In his defence, he said that he is the 1st born son of the plaintiff and that he has been staying on land parcel W. Bukusu/S. Mateka/622. He stated that for him to move to Kisa, the plaintiff has to prove he owns the land. He said that he has not refused to move to Kisa but his fear is that the plaintiff has no Legal right to relocate the defendant to a land that does not belong to him. He further avers in his defence that he has been on the suit land and has acquired the same under adverse possession.

[6]. During the hearing the defendant did not come to defend the suit.

[7]. The proprietary interests conferred to a proprietor are well set out in Sec. 24 of the Land Registration Act No. 3 of 2011. The rights of a proprietor thereof are well set out in Sec. 25 of the said Act the only exception to those rights are the overriding interests set out in Sec. 28. The defendants only connection with the plaintiff is that he is his son. This relationship is not protected under Sec. 28 aforesaid. The defendant is an adult and can no longer be a dependant of the plaintiff. He has been well prepared by his father during his minority days to face the world on his own. He cannot cling to his father's land and live there by force when his father wants him to leave and vacate and move out of the land. Fortunately, for him his father has given to him a portion of his (father's) inheritance in Kisa/Mushiangubu/697 comprising 0.28 ha. The defendants father inheritance has been determined in Succession Cause No. 44 of 2014. That is where the defendant shall go. Since the defendant in his defence has not refused to move to Kisa and his only fear was whether the plaintiff owns that land, and since the land as aforesaid belongs to the plaintiff, the defendant misapprehension is misplaced.

[8]. The final orders of the court is that the plaintiff's claim is allowed. The defendant shall move and vacate out of the suit land and move to Kisa within 60 days, failing which he will be evicted therefrom by the plaintiff with the court brokers assistance. If, the defendant moves out and vacates the said land within 60 days each party shall bear their own costs. If he fails to do so he shall be evicted as aforesaid at his own costs. He shall in that event, pay the costs of this suit.

It is so ordered.

Judgment read in open court before Mr. Juma Advocate.

DATED at BUNGOMA this 23rd day of May, 2017.

S. MUKUNYA

JUDGE

In the presence of:

Joy/Gladys

Mr. Juma - Holding brief for Nanzushi for the Plaintiff

Nanzushi for the Petitioner

Wetangula Adan for the denfendant - Absent Judgment Notice served.