

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

LAND AND ENVIRONMENT CASE NO. 108 OF 2015

CONCEPTA TINDI WAFULA.....PLAINTIFF

VERSUS

MORRIS WATILADEFENDANT

JUDGEMENT

[1] The simple facts of this case are that the plaintiff was one of the wives of Peter Wafula Watila now deceased. On her husband's death the plaintiff filed Nairobi High Court Succession Cause No. 119/92 after she was given the consent to do so by her co wife Mary Nafula Watila who later died. The plaintiff was given letters of administration of her husband's estate on 28th April 1993 and she was made a sole heir of land parcel number East Bukusu/S.Nalondo/241 and E.Bukusu/S.Kanduyi/2080. She then applied for consent of the Land Control Board to have the suit land transferred to her on 13/9/92 and consent was given on the same day. She transferred the land to her name on 3/5/93 and a title deed was issued to her. She produced all those documents in court.

[2] She says that the defendant who is her husband's brother later entered the land and built on the land she was given. She said that she went to the area chief and reported the matter and the chief asked the defendant to move out and vacate the suit land. The defendant has failed to do so rendering this suit necessary.

[3] The defendant's case is that the land in dispute was bought by his father. He says that the plaintiff has never entered the land. He denied any knowledge of the Succession the plaintiff had filed. He requested the court to allow him to stay on the suit land. On cross examination however he admitted that the plaintiff as his brother's wife and a brother who died when he was only 10 years old. He also admitted that he knew Succession cause was filed and a title given to the plaintiff further that, that previously the land had been given to the plaintiff's husband Peter Wafula Watila.

[4] That being the plaintiff's and defendant's case, is there any reason why the defendant should not move out and vacate out of the plaintiff's land?

As far as I could see, there is absolutely nothing shown to court as to why the defendant entered the land. No reason was tendered to court why he should not vacate.

[5] Having perused at the documents produced by the plaintiff, I am satisfied that the land belongs to her. The defendant should move out and vacate the suit land forthwith failing which the court bailiff shall evict the defendant therefrom.

This suit succeeds as prayed with costs to the plaintiff.

Dated, signed and delivered at Bungoma this 27th day of July 2016

S.MUKUNYA - JUDGE

Plaintiff present

Defendant present