

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

LAND AND ENV. CASE NO. 133 OF 2013

RUTH MUKHWANA SIFUNA NGACHI.....PLAINTIFF

VERSUS

MULIEVI BURUDI.....DEFENDANT

J U D G E M E N T

[1] The plaintiff filed this suit claiming a permanent injunction restraining the defendant or any other person working under his instructions not to interfere with the peace and full occupation of the plaintiff in land parcel Bokoli/Kituni/661. She also prayed for a cancellation of the title deed and prayed for the land to be reinstated in the name of Mukhebi Ngachi.

[2] The defendant filed a defence and denied the allegations of the plaintiff. He filed a counterclaim and prayed for eviction of the defendant, by herself, family members, servants and agents or any one else claiming through her directly and indirectly.

[3] When this case came for hearing on 8th of June 2015 the plaintiff did not attend the court and the suit was dismissed under order 12 rule 3(1) of the Civil Procedure Rules. The defendant was to fix the counterclaim for hearing. The same was fixed for hearing on 17/5/2016.

The plaintiff was supposed to be served with the hearing notice. An affidavit of service was filed in court on 16/5/2016 by one John Masakari.

[4] One Joseph Mulevi gave evidence how he bought the 5.5 acres of land from Mukhebi Ngachi for Ksh. one million. He said he paid the purchase price in full and the land was transferred to his name in 2012. This was land parcel Bokoli/Kituni/661. The agreement for sale was produced in court and the copy is in the file. Original was also shown to court. The defendant said that the seller was the brother of the plaintiff. The defendant told the court that the plaintiff has other lands which are occupied by her sons. He produced searches of those lands and named them as Bokoli/Kituni/662 and 669 which were annexed on page 7 of the record filed in court. The defendant told the court that the plaintiff's sons came and occupied his land in 2012 and built two houses. He prayed that they be evicted.

[5] Having heard the case for the defendant on his counterclaim. I am satisfied on the balance of probabilities that the plaintiff has occupied the land of the defendant without a reasonable cause. I am satisfied that the defendant and her sons have their own lands where they should relocate.

I allow the defendant's counterclaim as prayed with costs.

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

S.MUKUNYA - JUDGE

In the presence of

Gladys Court Clerk

Mr. Omukunda for the defendant

Plaintiff never appeared