



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 174 OF 2006

SAMSON LOTIRAKORI LILIKEPLAINTIFF

VERSUS

NGURIAGEMO LOKWALIMA ISIAHDEFENDANT

JUDGEMENT

INTRODUCTION

1. The Plaintiff is the son of Lotirakoli Lilike who is said to have died in or around 1993 (deceased). The deceased was the registered owner of LR NO. West Pokot/Siyoi "A"/429. The deceased had two wives. He subdivided his land which was 37 acres and gave 22 acres to the first wife who is mother to the plaintiff and gave 15 acres to the second wife. The deceased then sold 11 acres belonging to the second wife to the defendant. The deceased later sold the remaining 4 acres of the second wife after he bought land elsewhere where they moved and settled. The first 11 acres the deceased sold to the defendant are not contested. What is contested is the 4 acres which he later sold to the defendant who has obtained title to the same (suit land) being LR NO West Pokot/Siy /1167.
2. The Plaintiff filed this suit against the defendant in 2006 seeking an order of eviction of the defendant from the suit land.

PLAINTIFF'S CASE

3. The Plaintiff testified that his deceased father was owner of LR NO West Pokot/Siyoi "A"/429 which was 14.8 hectares. His father later subdivided the land into two portions namely West Pokot/Siyoi "A"/1167 and West Pokot/Siyoi "A"/1052. His father then gave him West Pokot/Siyoi "A"/1167 as a gift. His father took him before the land control board where consent to transfer the land was obtained.
4. The Plaintiff testified that he does not reside on the land which was given to him. He states that it is the defendant who is occupying the same based on allegations that he bought the same from his late father. He later conducted a search and found that the suit land is registered in the name of the defendant. He contends that the registration of the defendant as proprietor of the suit land is fraudulent and that therefore the defendant should be ordered to vacate from the suit land and he be ordered to transfer the suit land to him failing which the Deputy Registrar should sign the documents of transfer and all consents on behalf of the defendant.
5. The Plaintiff further contends that the defendant forged the documents which he used to have himself registered as owner of the suit land. He stated that he was unable to process title because

he had no money to do so.

DEFENDANT'S CASE

6. The defendant testified that he bought the suit land from the plaintiff's father through an agreement dated 19/3/1978. He paid Kshs.3,000/= in cash and gave the plaintiff's father 5 female cows and 4 bulls. The plaintiff's father had two wives. He subdivided his land into two portions. He gave his first wife who is mother to the plaintiff 22 acres. He gave his second wife 15 acres. The plaintiff's father sold 11 acres out of the portion given to the second wife and later sold the remaining 4 acres. He then relocated with his second wife. The plaintiff sold his mother's portion to seven different people. The plaintiff's father died in 1993. It is after this that the plaintiff started claiming the four acres which had been sold to him. The defendant contends that the suit land was sold to him by the plaintiff's father and that he obtained title to the same in 1992 after undergoing the necessary procedures including consent to transfer the land.

ISSUES FOR DETERMINATION

7. There is no contention that the suit land is registered in the name of the defendant. The only issue for determination is whether the registration was obtained fraudulently.

ANALYSIS OF EVIDENCE

8. The Plaintiff contends that his late father's land measuring 14.8 hectares comprised is in LR NO. West Pokot/Siyoi "A"/429. That the said land was subdivided into two portions namely West Pokot/Siyoi "A"/1167 and West Pokot/Siyoi "A"/1052. He contends that his father gave him LR NO West Pokot/Siyoi "A"/1167 as a gift but before he could process title, he realised that the same plot had been registered in the name of the defendant. The Plaintiff in his list of documents filed copies of official searches in respect of West Pokot/Siyoi/1167 and 1052. These searches show that Plot 1052 is a subdivision of Plot 429 whereas plot 1167 (suit land) is a sub division of plot 1051. It cannot therefore be true that Plot 429 was subdivided into two portions one being 1052 and another being 1167 as the plaintiff claims. The defendant obtained title in respect of LR West Pokot Siyoi/1052 on 12/2/1986. This plot is not in contention. The defendant obtained title to the suit land on 17/1/1992.
9. The plaintiff produced application for the consent [exhibit 1] and consent of the land control board [exhibit 2] which was allegedly applied for on 4/2/1986 and the same granted on the same day. The consent was for the whole of parcel No. West Pokot/Siyoi/1167. This consent was given 8 days before the defendant obtained his title in respect of plot No. West Pokot/Siyoi/1052 which is not in contention. It is very doubtful whether LR NO West Pokot/Siyoi/1167 was in existence as at 4/2/1986. This is because the same plot is shown as a sub division of LR NO West Pokot/Siyoi/1051 which was transferred to the defendant on 17/1/1992. The plaintiff did not produce minutes of the board which allegedly gave consent to his father to transfer the suit land to him on 4/2/1986. If an extract of title would have been produced in this matter, it would have shown the true position of LR West Pokot/Siyoi "A"/429 together with its subsequent subdivisions.
10. The Plaintiff had alleged in his statement of claim that the defendant obtained the title to the suit land fraudulently. There was no evidence of fraud tendered by the plaintiff to prove his allegations. The defendant called DW2 Joshua Musa Lokorwa. This witness was an assistant chief of Siyoi Sub-location in 1978. He testified that on 19/3/1978 the plaintiff's father who had 37 acres sold 15 acres to the defendant. The elders complained that he was selling the whole of his 15 acres. The defendant then surrendered back 4 acres to the seller. When the plaintiff's father got land elsewhere, he came and sold the 4 acres to the defendant. The defendant called DW3 Kaputin Kemer who is a step brother of the plaintiff. This witness testified that his father who is also the father of the plaintiff had two wives. The plaintiff is from the first house whereas he comes from the second house. His father had land which was 37 acres. He subdivided it and gave the

plaintiff's mother 22 acres. His mother got 15 acres. His father sold 11 acres to the defendant. When his mother got land at Lelan, his father sold the remaining 4 acres to the defendant. The evidence of this witness corroborates that of the the assistant chief of Siyoi Sub-location DW2.

11.The plaintiff did not deny the defendant's evidence that he has sold his mother's entire land to seven different people. During cross – examination the plaintiff conceded that he has no land left and that he is staying on rental premises. He conceded that even when his own father died, he did not attend his burial. He alleges that he was not informed. This is the person who is now claiming that his father had given him 4 acres as a gift.

12.The defendant has shown that the transaction which resulted in his registration as owner of the suit land received the consent of the land control board as shown in the minutes produced as defence exhibit 2. The transfer was approved in 1991 and the defendant obtained title in 1992 before the death of the plaintiff's father.

DETERMINATION

13.I find that the plaintiff has failed to prove the allegation of fraud levelled against the defendant.The defendant has demonstrated that he obtained his title in a genuine manner.The plaintiff's suit is hereby dismissed with costs to the defendant.

Dated, signed and delivered at Kitale on this 23rd day of March, 2015.

E. OBAGA

JUDGE

In the presence of Mr Wafula for M/S Arunga for plaintiff and Mr Chebii for the defendant. Court Clerk – Kasachoon.

E. OBAGA

JUDGE

23/3/2015