



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
LAND CASE NO. 18 OF 2013

JOYCE CHEMAIYO BETT..... 1ST PLAINTIFF
JOHN KITILIT BETT..... 2ND PLAINTIFF
(SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF DAVID K. BETT)

VERSUS

DENNIS WALTER BALA..... 1ST DEFENDANT
TIMOTHY OLANDA BALA..... 2ND DEFENDANT
JOSIAH OKIRI BALA 3RD DEFENDANT

J U D G M E N T

INTRODUCTION

1. The first and second plaintiffs are mother and son respectively and are legal representatives of the Estate of David Kogoyo Bett (deceased) who died on 25/12/2000. The deceased was the husband to the first plaintiff and father to second plaintiff. The deceased was the allottee of L.R. Kitale Municipality Block 11/65 (suit land). The first defendant is father to the second and third defendants.
2. The plaintiffs brought this suit against the defendants claiming the following reliefs:-
 - (a) An order of permanent injunction against the defendant from occupying, trespassing and constructing on the plaintiffs property and that all structures thereon be demolished.
 - (b) An order for eviction of the defendants from plaintiffs Title No. **Kitale Municipality Block 11/65** under the supervision of Officer Commanding Police Division (OCPD) Kitale.
 - (c) Costs of the suit
 - (d) Any other relief the Honourable Court may deem fit to grant.

PLAINTIFF'S CASE

3. The first plaintiff testified that she is the wife of the deceased and one of the administrators of the estate of the deceased. She produced Grant of Letters of Administration and Certificate of Confirmation of

Grant exhibit 1 and 2 respectively. The deceased had been allocated the suit land which was originally known as **Plot 2116/89/XV1 - Kitale** vide Letter of Allotment dated 16/12/1982 (Exhibit 3). Before the deceased died, he had paid some of the required amounts. The rest of the amounts were paid after his demise. A lease was issued (Exhibit 11) and thereafter a Certificate of Lease (Exhibit 8).

4. The first plaintiff testified that following the allotment of the suit land to the deceased, they moved into the property, fenced it and put up a small semi permanent structure on it. In the year 2013 they discovered that some unknown persons had invaded the property and were carrying out construction work on it. She tried to ask those who were constructing on the suit land why they were doing so but they did not give her any reason for doing so. She decided to move to court and filed this suit.

DEFENDANTS CASE

5. The first defendant testified that he bought the suit land from one **Richard Kissa Matayo** vide sale agreement dated 11/12/2009 (Defence Exhibit 3). He paid Kshs. 2,500,000/=. Richard Kissa Matayo (Matayo) who has since died had told him that the original certificate of lease was with the Agricultural Finance Corporation (AFC) where he had obtained a loan. Matayo told him that the title was in the name of Elgon Housing Services and that he he was the one operating under that name. He showed him a Certificate of Registration of Elgon Housing Services (Defence Exhibit 8). Matayo showed him a search (Defence Exhibit 7) which showed that the property had been to AFC to secure a loan of Kshs.880,000/=.

6. Matayo wrote a letter (Defence Exhibit 10) authorizing him to collect the original certificate of lease from AFC. Matayo had told him that he was selling the property to clear the loan owed to AFC which had advertised the suit land. Matayo showed him an advertisement in the East African Standard (Defence Exhibit 4). Matayo too showed him letter of allotment on which fees had been assessed at Kshs.75,190/=. He also showed him a receipt for payment of Kshs.75,190/=. The copy of allotment and receipt were produced as Defence Exhibit 5 and 6 respectively.

7. The first defendant testified that he took possession of the suit land and has since constructed two bungalows which are rented out to two families. He produced two photographs showing the two houses [Defence exhibit 14(a)] and 14(b). The first defendant further testified that he received a demand for land rent [Defence Exhibit 12(a)]. He paid the demanded rent into the bank as per Defence Exhibits 12(b) and(c) which are pay in slip and customer rent assessment from KRA. He also produced a demand for rates from the County Government of Trans-Nzoia (Defence Exhibit 13).

8. The second and third defendants testified that though they are sons of the first defendant, they have nothing to do with the suit property and that they have been wrongly sued in this case.

ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION

9. There are certain facts which are not in contention. This include the fact that the plaintiffs are the registered owners of the suit land by virtue of them being the administrators of the Estate of the deceased who was the allottee of the suit land. The other uncontested fact is that the first defendant is the one in occupation of the suit property and that he has constructed some two houses on the suit land. The first defendant contends that he is on the suit land based on a sale agreement between him and Matayo who was operating under Elgon Housing Services. Now the issue which emerges for determination is whether Matayo had nay interest in the suit land capable of being passed on to the first defendant.

10. The first defendant contends that he bought the suit property from Matayo after Matayo showed him a copy of certificate of lease and told him that the original was with AFC where he had secured a loan. The first defendant testified that he later collected the original from AFC. A copy of the original was produced by the first defendant as defence exhibit 2 after the court viewed the original which was returned to the first defendant. The said certificate is said to have been issued on 18/12/2006. There was an officer from the Lands Office, Kitale who testified in this case. He is PW2 Aggrey Kavehi a Senior Assistant Registrar. He testified that according to the records held by their office, the suit land was

allocated to David Kagoyo Bett with effect from 1/12/1982. The lease was for 99 years and the acreage was 0.6362 hectares. He referred to a letter dated 25/7/2012 from the Commissioner of Lands forwarding a lease in the name of the deceased. He testified that they received the lease and registered it in their records and waited for the administrators of the estate of the deceased to come for issuance of a certificate of lease. When the administrators of the estate of the deceased came with the necessary documents, a certificate of lease was issued to them. This witness produced an extract from the register showing both the green and white cards (Exhibit 12). This document shows that the plaintiffs are now the registered owners of the suit land. This witness confirmed that certificate of lease in the name of Elgon Housing Services (Defence Exhibit 2) and lease (Defence exhibit 11) do not exist in their records. This means that though the said documents purport to be in respect of the suit property they are not registered anywhere.

11. It is clear from the documents produced by the first defendant that he was conned by Matayo. Matayo had told the first defendant that the original certificate of lease was with the AFC. He showed him a purported official search that Elgon Housing Services had charged the title to AFC to secure a loan of Kshs.880,000/=. If there was any such loan and charge, the same would have been reflected on the encumbrances section on the register. The first defendant produced a letter which Matayo wrote to the manager of AFC authorizing the first defendant to collect title. This letter is dated 15/11/2010 and was produced as Defence Exhibit 10. What is interesting is that this letter is different from the one which the defendant filed in his list of documents in court. In the letter produced as exhibit, there are hand written notes by Matayo confirming that he had received a notification of discharge in respect of the suit land. This was on 15/11/2010 the same date he wrote the letter to AFC. There are also hand written notes by the first defendant acknowledging that he had collected certificate of lease title deed. This was on 7/12/2010. These endorsements were inserted later because already the first defendant had filed the same letter in court without those handwritten endorsements. There is no way a certificate of lease would have been collected from AFC and yet there was no charge over the same. The truth of the matter is that it had dawned on the first defendant that he had been conned and he was now looking for ways to show that he was an innocent purchaser for value without notice. Matayo is said to have died on 13/9/2013 see certificate of death (Defence Exhibit 9). The first defendant filed his list of documents on 9/10/2013. It is therefore clear that the handwritten notes on the letter of 15/11/2010 purporting to have been written by Matayo were actually not written by him. They were written after Matayo's death purposely for this case. The first defendant was part of this scheme because he also endorsed that letter to indicate that he collected a certificate of title from AFC. The first defendant is the one who produced the letter as his exhibit and he was taken to task about the differences in the document he produced and the one he filed in court and the one he gave to the plaintiff's lawyer.

12. The documents given to the first defendant by Matayo were forgeries. The loan to the AFC was faked. The official search purporting to confirm the loan was also fake. The advertisement in the East African Standard about an alleged sale of the suit land was also fake as there was no charge over the suit property which would have called for the sale of the property. It is therefore clear that Matayo had no interest to pass to the first defendant. The first defendant cannot claim to be an innocent purchaser for value. Mr. Onyancha for the defendants submitted the first defendant was an innocent purchaser for value without notice. Mr. Onyancha referred to Section 39 of the Registered Land Act Cap 300 (Now repealed). Section 39 (1) states as follows:-

39 (1) “ No person dealing or proposing to deal for valuable consideration with a proprietor shall be required or in any way concerned -

(a) to inquire or ascertain the circumstances in or the consideration for which a proprietor or any previous proprietor was registered”

The marginal notes under this Section are clear that the Section protects persons dealing in registered land. In the instant case it is clear that Matayo was not registered as proprietor of the suit land. The first defendant cannot therefore seek to come under the protection of this Section and argue that he was an innocent purchaser for value without notice. A reading of Section 39(1) (a) connotes that a purchaser is only required to deal with a registered proprietor. What he is not supposed to inquire into is how the

person obtained registration. A person cannot purchase a property based on forged papers which have not been registered and then later claim that he was an innocent purchaser for value without notice. If this were to be the case, then land fraudsters would get a field day at the expense of genuine owners of land. Some basic diligence is required. The basics include an official search which the first defendant seems not to have done. He only depended on documents provided by Matayo.

13. I have demonstrated how the first defendant went on to manufacture evidence in support of his case. The first defendant went to the County Government and obtained demand for land rent which he paid. This was in 2014. This is long after the plaintiffs had obtained certificate of lease in 2012. Elgon Housing Services is not the owner of the property and the first defendant could not continue paying rent more particularly when it became clear to him that the property which he had bought did not belong to Elgon Housing Services owned by Matayo. The defendants tried to argue in their submissions that the plaintiffs did not include the suit land in the list of properties of the deceased. A look at the Certificate of Confirmation shows that they indicated that the deceased had a property in Kitale town. The evidence of the first plaintiff was that the deceased had one property in Kitale town. There is therefore no basis for the defendants submissions that the plaintiffs did not include the suit land in the list of the deceased's properties.

14. The deceased was allocated the land. He paid some amounts and the balance was cleared by the plaintiffs. Whether the amount was paid strictly in accordance with the letter of allotment or not is not an issue. The fact remains that the plaintiffs finally completed paying the required sum. A lease was given and a certificate of lease issued. This title cannot be defeated except in accordance with the Provisions of the Law under which it was issued. There are no grounds raised upon which the same can be challenged.

15. It was argued that the second and third defendants were wrongly sued. During the hearing the second defendant conceded during cross examination that he used to oversee the construction of the houses on the suit property. The third defendant is the one who paid Kshs.33,200/= being land rent according to Exhibit 12 (b) and (c). The plaintiffs sued those who had invaded their property. The second and third defendants were active in whatever was going on on the property. They cannot therefore turn round and claim that they were wrongly sued.

DETERMINATION

16. I find that the plaintiffs have proved that they are the rightful owners of the suit land. The defendants have no right whatsoever to remain on the same property. I allow prayer (a) (b) and (d) of the plaint. The defendants are given three months to demolish the structures on the suit land failing which the same shall be done by the plaintiffs at the cot of the defendants.

Dated, signed and delivered at Kitale on this 21st day of May, 2015.

E. OBAGA

JUDGE

In the presence of Mr. Yano for Plaintiffs and Mr. Kaosa for Mr. Onyancha for Defendants.

Court clerk Isabellah

E. OBAGA

JUDGE

21/5/2015

