



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 36 OF 2015

MARGRET NEKESA MULONGO.....PLAINTIFF

VERSUS

METRINE NAFULA..... DEFENDANT

J U D G M E N T

INTRODUCTION

1. The plaintiff is a shareholder of **Nakwangwa Multipurpose Co-operative Society** (society). The plaintiff brought this suit against the defendant seeking orders of eviction from a two acre parcel of land at the society's farm commonly known as **Nakwangwa Farm** (suit land). The defendant who was duly served with summons to enter appearance neither filed appearance nor filed defence. The hearing of this case therefore proceeded by way of formal proof.

PLAINTIFF'S CASE

2. The plaintiff testified that she is 90 years old. In **1992** she became a member of the society and was allocated a **two acre parcel** of land at the farm. She put up a house on the land in **1993** and stayed on the land until **2007** when she started becoming sick due to her advanced age. She arranged to have the defendant take care of the suit land as she moved to Kitale town to stay with one of her daughters. She used to pay the defendant some money for taking care of the suit land.

3. In **2012** she terminated the services of the defendant after giving her all her dues. She asked the defendant to leave the suit land but the defendant declined claiming that she had obtained ownership of the suit land. The plaintiff demanded that she moves out of the suit land in writing which demand she declined to heed prompting her to file this suit against her.

ANALYSIS OF EVIDENCE

4. The plaintiff produced a bundle of 13 receipts [Exhibit 1) which were issued to her by the society. She called **PW2 Joseph Kunikana** the chairman of the society and **PW3 Bernard Wabomba** the treasurer of the society. These two witnesses confirmed that the plaintiff become a member of the society in **1992**. She was **Shareholder No. 51** as per the Share Certificate produced as Exhibit 2 by PW3. The plaintiff was allocated two acres. These two witnesses confirmed that the plaintiff put up a house on the suit land in 1993 where she lived until **2007** when she moved out of the land because she used to be sick on and off. She brought in the defendant as a caretaker as she moved to Kitale where she could access medical facilities from the house of her daughter.

5. **PW2 Aggrey Wafula** is a village elder of Nakwangwa village. He testified that in 2007 he saw the

defendant on the suit land. He approached her and asked her how she had come to the suit land. The defendant told him that she had come to take care of the suit land in the absence of the plaintiff. He later heard that the defendant had refused to move out of the suit land.

6. The society had a loan with the Agricultural Finance Corporation. Each shareholder was asked to pay some money directly to the AFC to offset the loan. The defendant used to bank her bit through her daughter Emily **Nekoye Lusaka** who produced three bank in slips as Exhibit 3. From the documents produced by the plaintiff, there is no doubt that she was a member of the society. She was allocated 2 acres. Due to her advanced age, she moved to Kitale to stay with her daughter. She engaged the services of the defendant to look after the suit land. The defendant is now taking advantage of her position to lay claim to the land. The evidence of the plaintiff is uncontroverted.

DETERMINATION

7. I find that the plaintiff is the beneficial owner of two acres at Nakwangwa Farm. The defendant has no ground for refusing to move out of the suit land. I allow the plaintiff's claim with the result that an order of eviction is hereby given ordering the removal of the defendant or anyone claiming under her from the two acre belonging to the plaintiff at Nakwangwa Farm. The plaintiff shall have costs of this suit payable by the defendant.

Dated, signed and delivered at Kitale on this **22nd** day of **September, 2015**.

E. OBAGA

JUDGE

In the presence of the Plaintiff.

Court Assistant – Winnie.

E. OBAGA

JUDGE

22/9/2015