



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 78 OF 2003

JAMES KITERIE ALFAYO.....PLAINTIFF

VERSUS

MARGARET C. WAMBETE..... DEFENDANT

J U D G M E N T

INTRODUCTION

1. The plaintiff filed this suit against the defendant seeking a declaration that he is the rightful allottee of **Plot No. 38** at **Kitalale Settlement Scheme Phase 1** which plot was previously known as **Plot No. 80** (suit land). He also sought for a permanent injunction restraining the defendant from trespassing or disturbing his peaceful occupation of the suit land.

2. The defendant denied the plaintiff's claim and raised a counter claim in which she sought **Kshs.100,000/=** per year with effect from **18/8/2000** which amount she could have earned out of the suit land if she were doing farming on the suit land. She also sought orders of eviction against the plaintiff from the suit land as well as an order directing the plaintiff to demolish all structures on the suit land at his own cost.

PLAINTIFF'S CASE

3. The plaintiff testified that he is the one in occupation of the suit land which he bought from one **Patrick Towett** who had also bought the same from the original allottee one **Philip Eyanae Lobelu**. He stated that the suit land was originally **Plot No. 80** but it later changed to **Plot No. 38**. He bought 2 ½ acres out of 5 acres and that the other 2 ½ acres remained with the person who sold the suit land to him.

4. In 2002 while he was away his wife told him that the defendant had been to the suit land in the company of administration police officers who harassed his family. The dispute between him and the defendant was referred to the District Commissioner who failed to resolve the dispute. He contends that he took possession of the suit land in 2000, and has done development on it. He contends that the suit land is known as Plot No. 38 having changed from its previous Plot No. 80 and that therefore he should not be evicted from the suit land.

DEFENDANT'S CASE

5. The defendant who is said to be residing in England stated her case through her elder sister **Redempta Wekesa** who has a power of attorney from her. Redempta Wekesa testified that the suit land was allotted to the defendant on **18/8/2000**. The defendant was allotted **Plot No. 38** after paying the requisite fees. When the defendant went to the ground, she found the plaintiff who was in occupation. The plaintiff claimed that he was the owner of the suit land.

6. The defendant then contacted various officers ranging from the District Commissioner's office to the Director of Land Adjudication and Settlement. Correspondence from all these offices confirmed that the defendant was the allottee of Plot No. 38. When the dispute was brought before court, the court directed the Deputy Registrar of the court to go to the ground in the company of the District Surveyor and file a report regarding Plot Nos 38 and 80. The Deputy Registrar compiled a report which stated that the two plots were 400 metres apart and that the two had no relationship.

ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION

7. I have gone through the evidence adduced by the plaintiff and the defendant as well as their witnesses. One of the issues which emerge for determination is whether Plot No. 80 existed at Kitalale Settlement Scheme and if so whether it is the one which later came to be known as Plot No. 38. The second issue for determination is whether the suit land is the one known as Plot No. 38 and who is the rightful owner of the same.

8. The plaintiff's documents show that Plot No. 80 was allocated to Philip Eyanae Lobelu vide letter from the Provincial Commissioner's office Rift Valley. This letter of allocation was produced as Exhibit 1. The allottee was expected to be shown the land on the ground by the office of the land adjudication and settlement. This allottee (Philip Eyanae Lobelu) then sold Plot No. 80 to Patrick Towett who in turn sold the same plot to the plaintiff. This is according to sale agreement between Philip Lobelu and Patrick Towett on the one part and Patrick Towett and the plaintiff on the other part produced as Plaintiff Exhibit 2 and 3 respectively.

9. When the plaintiff filed this case in court, he filed an application for injunction. When the application came up for inter-partes hearing, the parties recorded a consent in the following terms:-

(a) "By consent the Deputy Registrar High Court to visit Plot No. 38 and 80, Kitalale Settlement Scheme Phase 1 in the presence of both parties"

(b) District Settlement Officer Trans-Nzoia and District Surveyor, Trans-Nzoia to point out the said parcels.

(c) That the Deputy Registrar to make notes accordingly and the same to be filed in court and the same to form part of the record herein.

(d) A sketch map be attached to ascertain the two plots

10. The Deputy Registrar's report as filed in court was produced by the defendant as Defence Exhibit 10. From the Deputy Registrar's report, it is clear that Plot No. 80 and Plot No. 38 are two distinct plots which are approximately 400 metres apart. There is evidence that Plot No. 80 was as a result of amalgamation of Plot No. 30 and Plot No. 80 which formed Plot No.36 which is 5 acres. This evidence is from **DW2 Francis Obiria Oseko** the County Land and Adjudication Officer Trans-Nzoia who produced a sketch [Defence Exhibit 11], which was prepared during the visit to the two plots.

11. The Deputy Registrar's report also mentions Mr. Towett as former owner of Plot 80 which was amalgamated with Plot No. 30. This is the same person who sold 2 ½ acres to the plaintiff and remained with 2 ½ acres as per the plaintiff's own evidence. The plots at Kitalale Settlement Scheme Phase 1 and particularly the disputed ones were 2 ½ acres each. This is why when Plot No.80 and 30 were amalgamated, they formed Plot No.36 which was now 5 acres.

12. There is no evidence adduced by the plaintiff to show that Plot 80 is the one which changed to Plot No. 38. Contrary to the plaintiff's claims, evidence has shown that Plot No. 38 is distinct from Plot No. 80 and that the two plots are 400 metres apart. I therefore find that Plot No. 80 is not the one which later became Plot No. 38.

13. On the issue as to who is the rightful owner of Plot No. 38 which is the suit land, I have no difficulty in finding that it is the defendant who is the rightful owner of the suit land. The defendant produced a letter of allotment [Defence Exhibit 2] dated 18/8/2000. According to the letter of allotment from the Ministry of Lands and Settlement, it is the defendant who was allotted Plot No. 38 at Kitalale Settlement Scheme Phase 1. The defendant produced a receipt [Defence Exhibit 4] which shows that she made payment of Kshs.3,000/= to the Settlement Fund Trustee on account of Plot No. 38.

14. When the dispute between the plaintiff and the defendant arose, the Director of Land, Adjudication and Settlement was informed, he wrote a letter [Defence Exhibit 6] directed to the District Land Adjudication Officer asking him to liaise with the District Commissioner to sort out the issue. The District Land and Adjudication Officer Trans-Nzoia, wrote to the District Commissioner confirming that the owner of Plot No. 38 was the defendant. This is as per letter dated 8/12/2003 produced as Defence Exhibit 7. The District Commissioner, then wrote to the District Officer Saboti Division confirming to him that the settlement office had confirmed that the defendant is the owner of Plot No. 38. The defendant produced this letter as Defence Exhibit 8.

15. The plaintiff called **PW2 Samuel Kisorio Moiben**, a former nominated member of parliament who stated that he was the chairman of Kitalale Settlement Scheme Phase 1 at its inception. This witness testified that he is aware that the plaintiff bought land from Mr. Towett but that he does not know where the land is situated. Though this witness testified that the numbers for phase one changed but that the plots on the ground did not change, there was no evidence adduced to show that this was the case.

16. It is the settlement and adjudication office who have records to show who is allocated what and the position on the ground. Evidence by the defendant through the land Adjudication and Settlement officer Trans-Nzoia County has shown that it is the defendant who was allocated Plot No. 38 at Kitalale Settlement Scheme Phase 1. There is evidence that Plot No. 80 and Plot No. 30 were amalgamated to form Plot No. 36.

DETERMINATION

17. It is therefore clear that the plaintiff has failed to prove that Plot No. 38 is the one which was previously known as Plot No. 80. His suit against the defendant cannot stand. The same is hereby dismissed with costs to the defendant. On the other hand, the defendant has proved that she is the rightful owner of Plot No. 38 at Kitalale Settlement Scheme Phase 1. There was however no proof that she is entitled to Kshs.100,000/= per year with effect from 18/10/2000. To that extent her claim does not succeed. As the defendant is the lawful owner of the suit land and since it has been proved that the plaintiff is occupying the same, the plaintiff is illegally occupying the suit land. An order of eviction is given against him from the suit land. The order of eviction shall take effect after **31/12/2015** if he does not voluntarily move out of the suit land. The plaintiff shall pay costs of the counter claim to the defendant.

Dated, signed and delivered at Kitale on this **15th** day of **September, 2015**.

E. OBAGA

JUDGE

15/09/2015

In the presence of Mr. Samba for Mr. Yano for Defendant.

Court Assistant – Winnie.

E. OBAGA

JUDGE

15/09/2015