



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL CASE NO. 118 OF 2012

SIMON WANJALA BUTEYO PLAINTIFF

VERSUS

1. RODAH MUTUA
2. ANJELA KALEKYE MUTUA ..DEFENDANTS

JUDGEMENT

INTRODUCTION

1. The Plaintiff brought this suit against the defendants claiming the following reliefs;-
 - (a) A declaration that Plot No. 57 being part of LR NO.9432 commonly referred to as Kalaha farm belongs to him.
 - (b) A permanent injunction restraining the defendants, their servants or agents from interfering with the plaintiff's use and possession of the plot or selling the same.
 - (c) Costs.
 - (d) Interest.
 - (e) Any other relief the court deems fit and just to grant.
2. The defendants are mother and daughter respectively. The two were duly served with summons to enter appearance and file defence but they neither entered appearance nor tried defence. The hearing therefore proceeded by way of formal proof.

EVIDENCE

3. The Plaintiff testified that on 21/1/2002 he entered into a sale agreement with one James Mutua Kinguu now deceased who was the husband of the first defendant and father of the second defendant. The agreement was for sale of one acre known as Plot No. 57 which was part of LR NO. 9432.
4. Plot LR NO.9432 belongs to Siboti Farmers Co-operative Society which had given its members plots equivalent to their share contribution in the society.
5. The Plaintiff paid Kshs.1,000/= being shares equivalent to one acre. The society issued the plaintiff with two receipts produced as exhibit 2 (a and 2 (b).

6. The Plaintiff then went ahead to clear his share of a loan owed by the society to Lands Limited who issued him with four receipts produced as exhibit 3 (a), (b), (c) and (d).
7. The plaintiff testified that he moved on to the land and took possession and started utilising it. He stated in his evidence that the defendants are contending that he did not buy the land.
8. The Plaintiff contends that the defendants are cultivating half of the one acre he bought and that they have refused to vacate the same even after the area chief asked them to move out. He produced a letter from the chief exhibit 4 in which the chief asked the first defendant to move out of the land as it belonged to the plaintiff.
9. The Plaintiff called PW2 Anthony Wanyonyi Shiloti as a witness. This witness testified that he was chairman of Siboti Farmers Co-operative Society between 1998 and 2003. He testified that the plaintiff became a member of the society by virtue of him purchasing shares from James Mutua Kinguu.
10. PW2 testified that at an unspecified time, James Mutua Kinguu approached the society to advance him some money. As the society did not have money, the said James Mutua Kinguu went away and later came with the plaintiff and told the society officials that he wanted to sell his shares to the plaintiff.
11. The society refunded James Mutua Kinguu his shares and allowed him to sell his shares to the plaintiff. The plaintiff was also allowed to offset his share of loan which the society owed to Lands Limited.

ANALYSIS OF EVIDENCE

12. I have considered the evidence adduced by the plaintiff and his witness and I have to determine whether the plaintiff has proved his case on a balance of probability to warrant the court to grant him the orders he is seeking.
13. Whereas the plaintiff testified that he paid Kshs.1,000/= to Siboti Farmers co-operative society limited, he produced two receipts exhibit 2 (a) and 2 (b) for Kshs.600/= each. The two receipts were issued by Siboti Tea Factory which is a different entity from Siboti Farmers Co-operative Society.
14. According to the agreement dated 21/1/2002, the plaintiff was buying James Mutua's shares which were valued at Kshs.8730/=. The plaintiff paid Kshs.5,900/=. The balance of Kshs.2630 was to be cleared by the end of 2002 and if there was to be any change (probably on the part of the vendor) the amount paid was to be refunded three times.
15. From the agreement, it is clear that payment of the balance was not cleared as per agreement. Kshs.1,000/= was paid on 14/6/2002. Another Shs.1,000/= was paid on 12/1/2003. On 31/1/2003 Kshs.500/= was paid to Rodah Mutua the first defendant.
16. There is no evidence to show whether the terms of the agreement were varied or whether the plaintiff paid the entire balance as agreed. There was also no evidence adduced to show whether there is any relationship between Siboti Farmers co-operative Society and Siboti Tea Factory.
17. It is also not clear whether James Mutua was a member of Siboti Farmers co-operative society and whether there was any proper transfer of shares from James Mutua Kinguu to the plaintiff.
18. The area chief who wrote a letter dated 8/2/2010 asking the first defendant to move out of plot 57 was not called as a witness to testify on what basis he arrived at the conclusion that the defendants were not owners of the suit land.
19. An order for eviction and injunction can only be granted when there is clear evidence that the plaintiff is entitled to the property he is claiming. In the present case the plaintiff has not proved on a balance of probability that he bought the land from James Mutua Kinguu. There was no evidence to show that the plaintiff had bought shares belonging to James Mutua Kinguu.

DETERMINATION

20. For the reasons given hereinabove, I find that the plaintiff has not proved his case against the defendants on a balance of probabilities. The same is hereby dismissed with no order as to costs.

Dated, signed and delivered at Kitale on this 18th day of February, 2014.

E. OBAGA,

JUDGE

In the presence of M/S Arunga for plaintiff. Court Clerk – Kassachoon.

E. OBAGA,

JUDGE

18/02/2014