



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL CASE NO. 83 OF 2010

KENETH IGADWAH ODANGA..... PLAINTIFF

VERSUS

MOSES KAPKAL

CHARLES CHEPKWOKO

JACKLINE SIGOI.....DEFENDANTS

RULING

1. The applicant Jackline Sigoi brought a notice of motion dated 2nd August, 2013 seeking to set aside an ex-parte judgement delivered on 23rd May, 2013.
2. The applicant was one of the three defendants who had been sued by the respondent herein. The case proceeded ex-parte by way of formal proof as the defendants who had been duly served with summons to enter appearance neither entered appearance nor filed defence.
3. The applicant has now come to court seeking to set aside the judgement delivered on 23/5/2013 on the ground that she was not served with summons to enter appearance. The applicant contends that she was not aware of any suit filed against her until when she was served with a Notice to show cause given on 20/6/2013 in which she was asked to show cause why she should not be evicted from LR 6138/3 at Endebess.
4. The applicant further contends that she is on the suit land on the strength of a sale agreement signed by the respondent's late father and her husband one Meshack Juma. The applicant contends that she has a defence to the respondents claim in that she had been living on the land for the last 23 years and hence has acquired the same by adverse possession.
5. The applicant's application has been opposed by the respondent who filed a replying affidavit and a further affidavit. The respondent is acting in person and some of the matters he has deponed to are not relevant to the application at hand.
6. The respondent contends that the applicant is not being truthful when she claims that she is on the suit property in her capacity as wife of Meshack Juma. The respondent contends that the said = Meshack Juma had tried to be enjoined in this suit unsuccessfully and =that the said Meshack Juma did not say that the applicant was his wife.
7. Whereas the respondent admits that the said Meshack Juma attempted to buy the suit land from his late father, he contends that the said sale agreement was invalidated and that the said Juma left the suit land but has been allowing third parties to utilise it for his own benefit.
8. The respondent maintains that he never sued the said Meshack Juma as he was not occupying the

- land and that he had renounced his interest in the land and that the money he had paid as deposit for the purchase of the land was converted into lease money for having utilised the land over a period of time.
9. I have carefully gone through the applicant's application as well as the opposition to it by the respondent. I have now to determine whether the applicant was served with summons to enter appearance and secondly if she has a defence on merits which will warrant the setting aside of the ex-parte judgement.
 10. The applicant contends that she was not served with summons to enter appearance. A look at the file reveals that there is an affidavit of service filed on 15th February, 2011 in which a process server called Archibald Wekesa Nyukuri states on how he served the applicant herein who was the third defendant in the suit. The service of summons was effected personally upon her. I therefore find that she was properly served with summons to enter appearance.
 11. To further demonstrate that she was served with summons to enter appearance and that she was aware of the suit against her, there is an affidavit sworn by Meshack Juma whom she calls her husband. The said affidavit which has been annexed is clear that the said Meshack Juma learnt of the suit against the defendants from the defendants themselves. The defendants informed him that the suit was set for hearing in November, 2011. True as deposed by Meshack Juma, the case had indeed been fixed for formal proof on 14/11/2011 but the formal proof could not proceed. The said Meshack Juma had wanted to be enjoined as a defendant in the case. The application was however dismissed by Justice Karanja. It is therefore not true for the applicant to claim that she did not know about a suit filed against her until the time she was served with notice to show cause in 2013.
 12. The said Meshack Juma in his affidavit indicated that the defendants who had been sued by the respondents were on the land on the strength of his authority. He did not say that the applicant was indeed his wife as she claims. Nothing would have been easier than saying so. Meshack instead said that the three defendants were in possession of the land with his permission. I did not think that a wife requires her husband's authority to remain on their land. The applicant including the said Meshack Juma are using all manner of tricks to remain on the land.
 13. The respondent herein has no reason remaining on the respondent's land. She is simply trying to litigate on behalf of the said Meshack Juma who has no interest in the land having expressly said so before the Provincial Administration and the family of the late Odanga father of the respondent. The applicant's claim for adverse possession has no basis. There have been disputes over the suit land which have gone through various administrative channels finally ending in filing of this suit.
 14. The respondent and his family were crudely evicted from their land and have been kept away by various tricks including intimidation. I am aware that land is an emotive matter and that in as much as possible each party should be heard in court. However in this case, it is clear that the applicant was served but ignored to come to court. She was sued for being on the land illegally. She has no reason to remain on the suit land. She is trying to litigate on behalf of third parties. This cannot be allowed.
 15. For the reasons given hereinabove, I find that the applicant's motion has no merits. The same is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this 19th day of March, 2014.

E. OBAGA,

JUDGE

In the presence of Mr Kiarie for Mr Kaosa for defendant and plaintiff in person. Court Clerk – Emily.

E. OBAGA,

JUDGE

19/3/2014