



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL APPEAL NO. 213 OF 2014

ALICE WANJA NJOROGE ACCUSED

VERSUS

REPUBLIC PROSECUTOR

JUDGEMENT

The Appellant herein namely **ALICE WANJA NJOROGE** has filed this Appeal challenging her conviction and sentence by the Hon. Resident Magistrate sitting at Nyahururu Law Courts. The appellant had been arraigned before the trial court on 2/4/2013 facing a charge of **FORCIBLE DETAINER CONTRARY TO SECTION 91 OF THE PENAL CODE.** The particulars of the charge were as follows:

“On the 25th day of March 2013 in Munyeki Village of Olkalou Division in Nyandarua county being in possession of land No. Nyandarua/Olkalou South/1483 of Ann Wanjiru Mwaura without colour of right held possession of the said land in a manner likely to cause a breach of peace against Ann Wanjiru Mwaura who was entitled by law to the possession of the said land”

Additionally the Appellant face a second count of **CREATING A DISTURBANCE IN A POLICE BUILDING IN A MANNER LIKELY TO CAUSE A BREACH OF THE PEACE CONTRARY TO SECTION 95(1) (B) OF THE PENAL CODE.** The Appellant entered a plea of ‘Not Guilty’ to both counts and her trial commenced on 4/7/2013. The prosecution led by **INSPECTOR MUGAMBI** called a total of three (3) witnesses in support of their case. The complainant **ANN WANJIRU MWAURA** told the court that she was the legal owner of plot No. 1483 Olkalou 5th Scheme having inherited the same after the death of her husband ‘Stephen Mwaura’.

On 25/3/2013 the complainant went to her land and found the complainant cultivating the same. **PW1** reported the matter to the local chief and then to the police. The appellant was summoned to Olkolau police station. Whilst at the police station it is alleged that the appellant became rowdy and noisy thus she was arrested and placed into cells. She was later charged with the two offences.

At the close of the prosecution case the appellant was found to have a case to answer and was placed onto her defence she gave an unsworn defence in which she denied having occupied/or possessed the complainant piece of land. The appellant alleged that to the contrary she was rightfully on the land having inherited the same from her late father. The appellant called a total of three (3) witnesses in support of her defence.

In his judgment which was delivered on 29/8/2014 the learned trial magistrate convicted the appellant on the first count and imposed upon her a fine of Ksh 20,000/= in default six (6) months imprisonment. Being aggrieved the appellant filed this present appeal. Being a court of first appeal I am obliged to re-evaluate the evidence on record and to draw my own conclusion based on the facts.

On the first count the appellant was charged with the offence of Forcible Detainer of land contrary to Section 91 of the Penal Code. The complainant in her evidence told the court that Plot No. 1483 originally belonged to her husband 'Stephen Mwaura' and that upon his death the land was transferred to her. The complainant produced as evidence of her ownership of the land a copy of Title Deed for Nyandarua/Olkalou South/1483. The said title bears the name of the complainant Ann Wanjiru Mwaura ID 27565940. The Title indicates that the complainant is to hold the land in trust for herself and one beneficiary whose name is given as 'Virginia Wambui Mwaura'. The said Virginia testified as **PW2** in the case. She told the court that the complainant was her mother and confirms that the land is theirs.

On her part the appellant insists that she was rightfully on the land. Her witnesses claim that the land belonged to the father of the appellant and upon his death his son 'Gerald Njoroge'. **DW2** was to distribute the land. On his part **DW2** confirms that a piece of land was indeed allocated to 'Stephen Mwaura' but he and the other witnesses deny that the said Stephen was ever married to the complainant.

From the facts it is quite clear that this case involves a squabble between relatives over rights to inherit land. The criminal process is not the correct forum to settle succession disputes or to determine ownership of land. If as has been alleged the complainant acquired title to the land through fraud and/or deception then this fraud ought to have been reported to police for action or a civil suit filed to compel the complainant to relinquish her claim to title. As it is the complainant showed to the trial court a title deed for the disputed land in her name. A title deed provides *prima facie* proof of ownership. As such the appellant had no right to enter and cultivate that land. The plot which the appellant claims was granted to her brother as administrator was Plot No. 1485. The plot to which the complainant holds title is Plot No. 1483 which is a totally distinct and separate parcel of land.

The appellant was unable to show any claim or right to Plot No. 1483. As such her presence thereon was illegal. By forcibly occupying and cultivating on Plot No 1483 which belonged to the complainant the appellant invited a breach of peace. The elements of the offence of Forcible Detainer were all present. I concur with the decision of the trial magistrate to convict the appellant on this offence.

I note that the trial magistrate made no finding on Count No. 2 of creating a disturbance at the police station. I myself have considered the evidence in support of this offence and find it to be wanting. I therefore acquit the appellant on count No. 2.

The upshot is that this appeal fails. The conviction of the appellant is confirmed and her sentence is also upheld.

Dated in Nakuru this 24th day of July 2014.

Appellant in person

Ms Ngovi for Office of Director of Public Prosecution.

M. A. ODERO

JUDGE

24/7/2015