



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
ENVIRONMENT AND LAND COURT
E.L.C NO.205 OF 2013

GILBERT MARUA NJAGI.....PLAINTIFF

VERSUS

JANE MUTHONI NJAGI.....DEFENDANT

J U D G M E N T

Gilbert Marua Njagi (*hereinafter referred to as the plaintiff*) filed a plaint asserting that he is the owner of land known as **Mugunda/Nairotia/Block/385**. He also asserts that (Jane Muthoni Njagi) (*hereinafter referred to as the defendant*) had been claiming that she is entitled to have a share out of his said land without any cause or reasons to share with her of his said land. It is the plaintiff's contention that the defendant's action of claiming to have a share out of his said land above mentioned is illegal and contrary to the plaintiff's wishes as the defendant had her own parcel of land and for unknown reasons she decided to sell the same and therefore has no right to claim for any part of land from his said land at all. The plaintiff contends that the defendant filed a dispute against his said land in Land Dispute Tribunal Mweiga sometime in the year 2001 and when the parties were heard in the matter the defendant was awarded 2.023 Hectares out of his said land and since then, the plaintiff has been opposing the illegal order given by the Land Dispute Tribunal as the said court had no power to order for his part of land to be given to the defendant. He stated that the plaintiff's claim against the defendant is therefore for an order that defendant should not have any portion out of his land and be restrained from interfering with his land in anyway whatsoever.

The plaintiff prays for judgment against the defendant for an order that the defendant is not entitled to share with the plaintiff's parcel of land that is land parcel No.MUGUNDA/NAIROTIA/BLOCK 1/385.

The defendant on her part filed a defence whose gist is that the parcel of land **No.MUGUNDA/NAIROTIA/BLOCK 1/385** as pleaded in paragraphs 3 and 4 of the plaint does not exist and consequently she cannot have any claims over non-existent land. She further contends that she is the lawfully registered proprietor of parcel of land **No.MUGUNDA/NAIRUTIA/BLOCK 1/1051** excised out of original parcel of land No.MUGUNDA/NAIRUTIA/BLOCK 1/385 pursuant to a decree of court issued in Nyeri Chief Magistrate's Court Award No.62 of 2001. All applications and appeals against the said award lodged by the plaintiff have all become a cropper.

She contends that the plaintiff's suit is a **non-starter, discloses no cause of action, is bad in law, an abuse of the court process** and **res judicata** in view of previous court cases between the parties over the subject matter thereof. She further contends that the issues in dispute have previously been adjudicated and

determined as between the parties vide Mweiga Tribunal Award Case NO.8 of 2001, Nyeri Chief Magistrate's Court Award Case No.62 of 2001, Nyeri High Court Miscellaneous Civil Application No.180 of 2010, Nyeri Court of Appeal Civil Appeal No.20 of 2005.

That in view of the above she shall raise a preliminary objection on a point of law that the suit should be struck out. The orders sought by the plaintiff are incapable of being granted and have in any event been overtaken by events and prayed that the plaintiffs suit be dismissed with costs.

The matter came for hearing on 14/5/2014 In his evidence Mr. Gilbert Njagi states that the land parcel No. Mugunda/Nairutia/Block 1/385 belongs to him and is registered in his name. He claims to have bought the land from the Government. He produced a certificate of search, a title deed issued on 20/4/1997, a green card extracted on 12/11/2001 and a letter from the Chief, Kauki sub-location. He also produced a receipt from Nairutia Farmers Co-op society Limited issued to his father for plot No.295. His father never completed paying for the plot and no one bothered to pay.

In support of his assertion that the land was his, he produced a plot allocation certificate and a certificate of search to show that the land was registered in his name. Moreover he produced a title deed and a green card indicating that the land was registered in his name. He also produced a letter from the Chief that showed that the defendant had her own parcel of land. He also produced a receipt from Nairutia Farmers Co-operative Society Limited issued to his father for plot No.295. His father never completed paying for the plot hence the land was given to someone else. He prayed for the court to quash the decision of the Tribunal.

The defendant, i on her part stated on oath that the plaintiff who is her brother had bought land of his own. The matter began in the Tribunal. She produced letter dated 17/4/2000 as Dexh1 written by the Chief of Mugunda location, Richard Ali Gatheru, as he then was, addressed to the Principal Magistrate Nyeri High Court informing her that Njagi Marua (deceased) who was the father of the plaintiff and defendant was proprietor of Mugunda/Nairutia/385.

She took this matter to the Tribunal and her clan members testified and said that the land belonged to their late father and therefore the same had to be subdivided between the plaintiff and defendant.

The Tribunal after hearing the parties and witnesses decided that the land was to be subdivided and shared between the two.

The plaintiff went to the appeals committee but his appeal was dismissed. He moved the High Court but the matter was decided in the defendant's favour. He moved to the Court of Appeal but the matter was decided in defendant's favour. She states that he came to this court but did not disclose that the matter was determined in her favour. She prays that the suit be dismissed with costs. She claims to be living in a tent and therefore suffering a lot. She states that her father appears as No.385 in Nairutia Coop. Society area list. She produced the area list indicating that her father was proprietor of land known as Mugunda/Nairutia/1/385.

On cross-examination by the plaintiff, she states that they are five sublings in their family but the others are quiet because they have land. She is not aware of parcel No.295.

In his submissions the plaintiff prayed for an order that the defendant is not entitled to share with the plaintiff parcel of land No.MUGUNDA/NAIRUTIA/385. The court should not take away his property.

The defendant on her part prays for eviction of the plaintiff from the land that belongs to her.

This court finds that this dispute was commenced at Mweiga Land Disputes Tribunal by Jane Muthoni Njagi against Gilbert Marua Njagi in respect of parcel No.Mugunda/Nairutia/Block 1/385 measuring 4.133 hectares. The Elders heard both parties and found that Jane Muthoni Njagi the plaintiff is a sister to Gilbert Marua Njagi, defendant. They also found that the parcel No.385 Mugunda/Nairutia/Block 1 was in the name of both plaintiff's and defendant's father. The plaintiff and the defendant are only two in their

mother's house. The Tribunal found that the father of the plaintiff and the defendant died in 1987 and the parcel Mugunda/Nairutia/Block 1/385 was under his name. Jane Muthoni Njagi has never been married. That the witness of the plaintiff herein, Jasan Njagi Karoki a clan member said the plaintiff and defendant herein were to be given equal shares of the parcel No. Mugunda/Nairutia/Block 1/385 measured 4.133 hectares.

After hearing the parties the Elders ordered Gilbert Marua Njagi to subdivide the suit land into two portions and the plaintiff was to own 2.023 hectares. The plaintiff was given 30 days right of appeal.

The plaintiff, appealed to the Central Province Appeals Committee as it then was but the appeal was dismissed on 8/5/2002. He was given 60 days to appeal to the High Court but never appealed in time.

On 24/9/2010, eight years thereafter the plaintiff took out a notice of motion and applied for leave to file an appeal out of time against the decision of the Central Province Land Dispute Appeals Committee made on the date aforementioned. The application was dismissed by Hon. Justice Serگون on the 15/7/2011 for want of jurisdiction to extend time as parliament did not give the court the power to extend time.

The plaintiff did not give up hence appealed to the Court of Appeal challenging the decision of Justice Serگون on grounds that the court erred in law in failing to consider the fact that the appellant had engaged a lawyer who failed to file the appeal in the High Court.

The Court of Appeal in its wisdom dismissed the appeal on grounds that the Land Disputes Tribunal Act has no provision granting the High Court power to extend time within which to the appeal from the decision of the Appeals Committee.

Though the plaintiff produced a plot allocation certificate, a certificate of search and a title deed and green card showing that the land in dispute was registered in his name, this court finds that the said documents were of no value as the Mweiga Land Disputes Tribunal and the Nyeri Chief Magistrate had already made a decision that the defendant gets 2.02 hectares out of the disputed property.

It is trite law that once the decision of the Tribunal is adopted by the Chief Magistrate it becomes a decision of the court and can be executed just like any other order or decree of the court.

The decision of the Tribunal was subsumed in the decision of the Nyeri Chief Magistrate's Court Award No.62 of 2001 which has never been reviewed or set aside. Judgment entered on 19/10/2001 in terms of the Tribunal/Award and subsequent decree and orders are still valid. This court can only review the decision of the Tribunal and the Chief Magistrate by way of Judicial Review or on appeal from the appeals committee but not by way of a claim brought by plaintiff. Moreover the decision of the Chief Magistrate in Award No 62 of 2001 was reduced into a decree and the same executed and parcel no Mugunda/Nairutia/1051 was excised from No. Mugunda/Nairutia/Block 1/385 pursuant to the decree and the same was registered in the name of the defendant.

The upshot of the above is that the suit lacks merit and is dismissed with no orders as to costs. The order of the Chief Magistrate's Court Award Case No.62 of 2001 dated 19/10/2001 to be enforced and the plaintiff be evicted from Mugunda/Nairutia/1051. Orders accordingly.

Dated, signed and delivered at Nyeri this 17th day of October 2014.

A. OMBWAYO

JUDGE