



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
CIVIL APPEAL NO. 58 OF 2007
KARUNDITO KARANJA.....APPELLANT
VS
MICHAEL MUCHOKI
MWANGI MBUYANI
NJERI GITHOME.....RESPONDENTS

JUDGMENT

The appellant sued the respondent in the lower court claiming to be the owner and allottee of Plot No. 230/ Sagana Town Council and alleged that the 1st, 2nd and 3rd respondents had been illegally occupying the said plot either by themselves or through their agents without the permission of the plaintiff and had refused to vacate the premises or pay rent and or mesne profits and/or pay damages for non-user to the appellant which has caused him much loss and damage and claimed the same from the defendants. He was unable to develop his plot due to the illegal occupation.

He prayed for eviction of the defendants from the said plot. He further prayed for damages for trespass and non user and costs of the suit.

The respondents responded to the allegation by filing a defence on 11/8/2005 denying the allegation of the plaintiff and claiming that the plaintiff and defendants were fully registered as owners of the suit land and therefore the defendants could not be trespassers.

This being a first appeal, this court has a duty to review the evidence on record. The appellants testimony was very brief that he had paid money to the Council and had been Jailed and had gone to the chief and police.

On cross-examination he claims that the plot belonged to his father and he transferred in his name in 1986 after the death of his father in 1981. He was not registered fraudulently as the proprietor as he had letter of administration.

Michael Muchoki Wamwea testified that he knew the appellant and his father. The appellants father was known as Karanja. Mr Muchoki and Mr. Karanja were the joint owners with mbiyani Madaa, Francis Githome Kanyeki, and Karanja Muiru. Michael Muchoki Wamwea produced a document from the clerk dated 22/7/2005 signed by Samuel Sakwo for acting town clerk certify that the property was registered in the names of

1. Karundito Karanja
2. Mbuyani Ndebewa
3. Michael Wamwea
4. Francis G. Kinyaki
5. Charity Njeri Githome

DW2 testified that Kinyeki Githome was her husband who died in 1997. She obtained letters of administration in respect of the deceased. According to this witness he owned plot No. 230 in Sagana in Partnership with 4 others thus Karanja Muiru, Michael Muchoki and Charity Njeri Githome. The plaintiff was the child of Karanja who died in 1981. she does not know how the plaintiff got registered as the proprietor of the plot.

DW3 was Beutar Muiru Karanja the son of Karanja Muiru who died in 1981 and a step brother to the plaintiff. He had two wives, one was Ruth Muthei and her children were the plaintiff Joseph Mbogo Wahito and Karesho. The other wife was Joyce Wanjiru and her children were this witness, irungu Wabethi and Ngochi. One of the properties his father had was plot No. 230 at Sagana which was owned by 3 people. The plaintiff went and secretly changed their father's name without their knowledge.

The learned Magistrate considered pleadings and the evidence on record and found that the plaintiff did not produce any documentary evidence that he paid money to the Council. The plot belonged to his father and the plaintiff claims that it was transferred to his name in 1986. He did not produce any letters of administration to prove that he was the administrator of the estate of deceased. The learned magistrate also found that the plaintiff admitted in cross examination that Mbuyani Ndurani and Michael Muchoki Wamwea were partners in the plot as well as Kanyeki who died but left behind the 3rd defendant as his widow .

The appellant has come to this court through a memorandum of appeal dated 9/7/2007 praying that the decision of the lower court be set aside and that the appeal be allowed on the following grounds.

- a. The Learned Magistrate erred in Law in arriving at a judgment without having due regard to the pleadings with special emphasis upon the plaintiff case.***
- b. The Learned Magistrate erred in Law and in fact without giving the plaintiff ample time to prove his case beyond balance probabilities and hence arrived at a wrong decision.***
- c. The Learned Magistrate erred in Law and in Fact in holding that parcel of land Number 230/SAGANA was registered fraudulently in the name of the plaintiff without putting the plaintiff to strict proof thereon.***
- d. The Learned Magistrate erred in law and in fact in concluding that the plaintiff had not proved his case against the respondents on a balance of probabilities***

In his submissions dated 12/2/2013 and filed on 25/2/2013 the appellant argues on grounds a and b that the appellants who was unrepresented did not get an opportunity to be guided on the evidence to tender. He therefore never got ample opportunity to adduce his evidence.

This court finds that these grounds lack basis as the appellant was given ample time but did not tender any evidence in support of his pleadings and allegations that he was the owner of the property.

I agree with the appellant that the finding by the magistrate that there is a possibility as claimed by the defendants that the plaintiff was registered fraudulently was wrong as the same had not been pleaded and proved however the fact that the appellant did not explain to the court how he became registered left the

court is serious doubt as to whether the registration was legally done, However, the findings by the Magistrate does not assist the appellant as he did not prove his case on a balance of probabilities as no document was produced as evidence of transaction. The property initially was registered in the names of 4 people including his father. How did he register it in his name.

This court finds that the appeal lacks merit and is dismissed with costs.

DATED AND DELIVERED AT NYERI THIS 11TH DAY OF DECEMBER 2014

OMBWAYO ANTONY

JUDGE