

REPUBLIC OF KENYA

High Court at Bungoma

Environmental & Land Case 23 of 2012

MOSES WANGILA JUMA PLAINTIFF

VERSUS

ALEX JUMA WAKHUNGU DEFENDANT

JUDGMENT

The plaintiff filed this suit on 20th February 2012 vide Webuye PMCC NO. 26 of 2012 seeking orders against the defendant for eviction, costs of the suit and any other relief the court deems just to grant. Alongside the plaint, he filed his list of documents and witnesses.

The matter came up for hearing before Cheronon – SPM who on its own motion referred the matter to the High Court in to the High Court in light of gazette notice No. 1617 of 2010. This was before the chief justice issued practice directions as regards land & environment matters which directions allowed the magistrates courts to hear land matters falling within their jurisdiction. On transfer to Bungoma High Court, it was issued with a new No. 23 of 2012.

The matter therein proceeded to hearing before me on 5th December 2012 wherefore the plaintiff and his two witnesses adduced evidence. There was no appearance for the defendant but affidavit of service on record showed that he was duly notified of this hearing date of 5th December 2012.

The plaintiff contends that he purchased land title No. **Kakamega/Luandeti/910** in 1972. He moved to Kitale in 1978 where he has lived to date. He would plough or lease out the land in question (**kakamega/luandeti/910**). He was issued with a title deed on 19th October 2011 and he produced a copy of the title as exhibit in his list of documents. According to him, he had lost his ID so he applied for replacement of the title deed.

In the year 2009, in November, he received a call from Bernard (PW2) that the defendant was building on his land. The defendant according to him is his nephew. He reported the matter to the sub-chief but the defendant refused to listen. The matter was referred to the chief and subsequently to the district officer who advised him to come to court. He has produced a copy of the assistant chief's letter as No. 2 in his list of documents.

As a result of that advice, we have the present suit.

He sought this court help to evict the defendant. At this point, I asked him to avail a copy of the green card which he presented to this court on 21st January 2013 and therefore forms part of this courts record.

His witnesses PW2 and PW3 confirmed getting a report from plaintiff for help to stop the defendant from building on the suit land. Efforts to stop the defendant from building on the land were fruitless as he came out with a panga ready for war. They confirmed that the defendant is still leaving on this land to date.

The title deed shows the plaintiff acquired title on the 19th October 2011. He got himself registered on 6th October 2011. According to the copy of the green card, previous registered owner is Moses Wangira Sanduku who got registered in 1975 and was issued with a title deed in 1977. The register indicates the transaction as change of name which transaction got the plaintiff to become the current registered

owner. The plaintiff in his evidence stated he lost his identity card but said nothing about the change of name. The plaintiff is called Moses Wangila Juma. Neither did he tell this court whom he bought the parcel of land from to enable this court get the relationship between the previous title holder - Moses Wangira Sanduku and himself Moses Wangila Juma.

Secondly, the plaintiff's case is that the defendant built in 2009. As at the time the defendant constructed his house, he was not the registered owner of this parcel of land and therefore he could not treat the defendant as a trespasser. His cause of action is based on the fact that the defendant without any colour of right trespassed and built on this parcel of land. Since it is my holding that the defendant did not trespass as at the time when he built for the reasons stated earlier, the cause of action fails because he got himself registered with the knowledge of the presence of the defendant on the suit land.

In conclusion, I make observations that the plaintiff has not proved his case within the required standards of the law as there are quite a number of loopholes are not explained. But it is not for this court to investigate the title since the defendant has not come to defend itself. I do therefore allow the plaintiffs suit but make no order as to costs. The defendant is granted 90 days from the date of service of eviction order upon him to vacate land parcel No. **Kakamega/Luandeti/910**. In default of the defendant complying, the plaintiffs be at liberty to forcefully evict him from the suit land using lawful means.

JUDGMENT delivered on the 30th day of January 2013.

A. OMOLLO

JUDGE