



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Civil Case 110 of 2000

MUTHUKIA WANGUHI.....PLAINTIFF

VERSUS

CHARLES WANJAU GATHUNGU.....DEFENDANT

JUDGMENT

The plaintiff filed this suit against the Defendant claiming or praying for

“(a) A declaration that the defendant holds land parcel No. NYERI/ISLAND FARM/85 in trust for the plaintiff.

(b) In the alternative and without prejudice to (a) above, a declaration that the plaintiff is entitled to land parcel NYERI/ISLAND FARM/85 by adverse possession.

(c) Transfer of land parcel NYERI/ISLAND FARM/85 to the plaintiff.

(d) Costs of this suit and interest thereon at court rate.

(e) Any further relief that this Honourable Court may deem fit to grant.”

That was in the plaintiff’s plaint dated 5th June 2000, based on what the plaintiff called an “understanding” which as he claimed, made him be entitled to the ownership of the suit parcel of land by registration on transfer, after the Defendant had been registered as the owner, the plaintiff claiming further that he paid some money in connection with the retention of that land by the Defendant.

The Defendant, on the other hand, filed a defence dated 17th July 2000 opposing the claims made by the plaintiff and asserting that the plaintiff had entered the suit parcel of land to stay there only temporarily and is supposed to vacate it. The Defence had a counter claim in which the Defendant alleged that the plaintiff is illegally in occupation of the suit parcel of land having only been a licensee whose licence had been terminated and that the plaintiff should therefore vacate the land.

The Defendant in the counter-claim prayed for the dismissal of the plaintiff’s case and further prayed for an order of eviction against the plaintiff.

When the case came before me for hearing on 15th February 2006, I dismissed the plaintiff’s application for adjournment as the record reveals that the plaintiff has not been keen in fixing the case for hearing, the

Defendant being the one taking hearing dates and the plaintiff coming to this court using various reasons to have the hearing adjourned. On 15th February 2006, the reason advanced by Mr. Wambugu, the plaintiff's advocate, was that he had just been instructed to act for the plaintiff and that he needed time to familiarise himself with the case. It was apparent the plaintiff had another advocate acting for him and Mr. Wambugu came to claim later that he had not obtained the plaintiff's case file from the other advocate who may have been conveniently kept away in order to strengthen the plaintiff's application for adjournment.

Having dismissed Mr. Wambugu's application for adjournment, he applied to cease acting for the plaintiff. I declined to grant that application.

Thereafter Mr. Wambugu applied to withdraw the plaintiff's case. I granted that application but ordered hearing of the Defendant's claim in the counter claim to proceed.

The Defendant came up with evidence which was sometimes inconsistent or contradictory especially when he told the court that Charles Wanjau Githinji whose name appears at entry number 2 dated 6th January 1988 in the land register was his step father who died in 1992 and subsequently changed the story to say that the person at the said entry number 2 dated 6th January 1988 was he himself the defendant. Further, without explanation he claimed to have owned the suit parcel of land from the year 1968 yet the land register shows at entry number 1 dated 30th July 1975 that *SETTLEMENT FUND TRUSTEES* were the first registered owners of the suit parcel of land and that the registration of the Defendant as owner of that land came at entry number 3 dated 13th March 2000. He would not say how he got the land from the Settlement Fund Trustees but explained that he got registered at entry number 3 following a correction of the name at entry number 2. Due to his contradiction as to who Charles Wanjau Githinji was, the evidence otherwise suggested that the Defendant ought to have gone through a succession cause obtaining a grant of letters of administration in order to take over the land already registered in the name of Charles Wanjau Githinji. But nothing came out clearly as the Defendant was the only witness and the plaintiff, though through his advocate fully cross examined the Defendant on the counter-claim, failed to adduce evidence to defend himself in the counter-claim and therefore on the evidence before me, not withstanding the inconsistencies and contradictions in the evidence adduced by the Defendant, I find, on the balance of probabilities that the Defendant has proved his counter-claim against the plaintiff in that it is undisputed that he is the present official registered owner of the suit parcel of land under the Registered Land Act, (Cap. 300 Laws of Kenya) and holds the relevant title deed issued to him on 1st August 2000 and that though the plaintiff claims to have had some "understanding", (not clarified) which enabled him to enter and occupy the suit parcel of land, to-date there is nothing to show that the plaintiff acquired legal interest in the suit parcel of land to be protected by this court although he also claims to have entered the land in 1967 before the first registration of the land dated 30th July 1975 in the name, Settlement. Fund Trustees, who ought to have called him a trespasser by then.

In the circumstances, the plaintiff's claim against the Defendant in this suit having been earlier on withdrawn and marked withdrawn, the order respecting prayer (a) in the Defendant's counter claim is no longer required except for costs.

However prayer (b) still remains in the Defendant's counter claim and the same is hereby granted in that the plaintiff is ordered to vacate the suit parcel of land within a period of six months from the date of this judgment.

In default, the plaintiff be evicted from the suit parcel of land.

The plaintiff to pay costs of this suit, that is costs of his claim against the Defendant as well as costs of the Defendant's counter claim against the plaintiff.

Dated this 1st day of March 2006.

J. M. KHAMONI

JUDGE