



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 22 OF 2015

JACKSON EKIM OMAIDO..... PLAINTIFF

VERSUS

LUCIA NGAIRA OMUNGA.....1ST DEFENDANT

ROSELYNE OMUNGA.....2ND DEFENDANT

CLARA ANDABWA.....3RD DEFENDANT

NELSON MAKOKHA.....4TH DEFENDANT

JOHN OKWAROI.....5TH DEFENDANT

STANLEY EKOINE JUMA.....6TH DEFENDANT

GEORGE WAFULA.....7TH DEFENDANT

KENNEDY MUMBWANI.....8TH DEFENDANT

BONIFACE NYONGESA.....9TH DEFENDANT

ALFRED CHAMAKETI.....10TH DEFENDANT

NAMBUCHA KIRIKACHA.....11TH DEFENDANT

ALEXANDER IMONI.....12TH DEFENDANT

JUDGMENT

1. The plaintiff vide a plaint dated 27/2/2015 and filed in court on 3/3/2015 instituted the present suit seeking for judgment against the defendants jointly and severally for the following orders:

(a) An order of eviction to issue against the defendants, their families, agents and/or servants from the plaintiff's land Reference No. 8699/8 (Original No. 8699/6/2).

(a) Costs of this suit.

The Plaintiff

2. The plaintiff's case is that he is the owner of all the parcel of land known as **Land Reference No 8699/8 (Original Number 8699/7/2)** and that the defendants are his past employees and/or licencees who were only allowed to reside on the suit land by virtue of their employment. He asserts that the defendants were supposed to vacate the suit land upon the termination of their employment.

The Defence

3. The 1st and 2nd defendants filed their defences on **31/3/2015**, which are similar in nature. The 3rd, 4th and 5th defendants filed their statements of defence on **6/5/2019** through Kraido & Co Advocates. I need not reiterate the contents of those defences in this judgment for the sole reason that all the defendants never appeared in court to give evidence in support of the statements contained therein. Consequently the statements in those defences remain bare, unsupported by any evidence to test their truth.

Replies to Defences

4. The plaintiff filed reply to 1st and 2nd defendants' defences on **16/4/2015** and on **29/5/2015** respectively. He reiterated the contents of his claim and did not admit any of the statements of the defences of the 1st and 2nd defendants. He never filed any reply to the defences of the 3rd, 4th and 5th defendants.

Submissions of the Parties

5. Upon perusal of the court file record I found no submissions filed on behalf of the plaintiff in this case. The defendants filed their submissions on **23/12/2020**. The defendants' submissions dwelt on **Section 7** of the **Limitation of Actions Act**.

The Plaintiff's case

6. The hearing of the suit took place on the **18/3/2019** when the plaintiff **Jackson Ekim Omaido** testified. His evidence is that he is the registered owner of the suit land. A copy of the plaintiff's title document, the Grant issued on **4/6/2010** in respect of the suit land, was among the documents produced as exhibits at the trial by way of mutual consent of the parties on **18/3/2019**. The plaintiff's further evidence is that he assumed ownership of the suit land through succession, having inherited the same from one **Alfred Arthur Durani Martineau**, and that the Grant in the succession cause was registered on **23/5/2008** and the certificate of title was issued on the same date. He stated that some of the defendants are his former employees while others are the relatives to those former employees. He stated that the ones who had worked as employees had ceased to work for him. He produced documents including NSSF return forms for one **Collins Omunga** and several other persons. According to him the 1st and 2nd defendants were wives to one **Collins Omunga** who had worked for him while the 3rd defendant is their mother-in-law. He also produced a master roll showing that one **Wycliffe Ekoine** whose name was contained therein was father to the 8th and 9th defendants. He produced a copy of the Payments register for **27/1/1987** to demonstrate that **George Wafula** the 7th defendant and **John Okwaroi** the 5th defendant were employees. The same register showed that **Morris Kirikacha** who was alleged to be the husband to the 11th defendant was also an employee. He testified that the defendants had become unmanageable while on the land and had illegally grazed their animals on his land. They had also felled trees in the forest on that land. The defendants' animals had also caused damage to his fish ponds as they drank water therefrom. He produced photographs of the animals and the damaged vegetation. Demand letters dated **22/12/2014** requiring the defendants to vacate the suit land were also produced in evidence.

The Defendants' Defence

7. On **19/11/2020** this matter came up for defence hearing. However when the matter was called out for hearing on the second occasion on that date, the 1st defendant was not in court and the 1st defendant's counsel opted to close the 1st defendant's case without any evidence of the 1st on the record. The rest of the defendants and their counsel were not in court and they did not testify in the suit.

Determination

8. I have considered the claim and the evidence of the plaintiff. I have also considered that all the defendants did not produce any evidence in the matter. As earlier stated in this judgment, the defendants' submissions dwelt on **Section 7** of the **Limitation of Actions Act**. However, even submissions of the defendant failed to address the very substantive issue raised by the plaintiff to the effect that they or their predecessors in their respective families were former employees of the plaintiff. Without any evidence from each of the defendants as to whether or not they were employees of the plaintiff, and without evidence regarding the date from which the statutory period in **Section 7** of the **Limitations of Actions Act** is supposed to have begun to run in their respective cases, this court declines to assume that the statutory limitation period applies in the defendants' favour against the plaintiff. It is an issue subject to proof by way of evidence. Consequently, it is obvious that the defendants did not offer any legal justification for their continued stay on the plaintiff's land, and I therefore find that they are trespassers who should be evicted therefrom. In this court's view, the plaintiff's evidence on the record is unchallenged and he has sufficiently established his claim against the defendants on a balance of probabilities, and I therefore enter judgment in his favour against the defendants jointly and severally. Consequently, I hereby issue the following final orders in this suit:

(a) The defendants, their families, agents and/or servants shall remove themselves from and in default shall be evicted from the plaintiff's land Reference No. 8699/8 (Original No. 8699/6/2).

(b) The defendants shall bear the costs of this suit.

It is so ordered.

Dated, signed and delivered at Kitale via electronic mail on this 18th day of January, 2021.

MWANGI NJORGE

JUDGE, ELC, KITALE.