



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 142 OF 2017

FORMERLY NAIVASHA CIVIL APPEAL NO. 26 OF 2015

LUCIA TEEKA.....PLAINTIFF

-VERSUS-

JOEL ZAKAYO NCHOE.....DEFENDANT

JUDGEMENT

This is an Appeal arising from the Judgement of the Hon. Resident Narok delivered on 9th February, 2015. The Appellant filed a Memorandum of Appeal dated 13th February, 2015 in which he listed 11 grounds of Appeal. The Appellant's grounds of appeal could be summarized into 4 distinct grounds that is: -

1. That the Learned Magistrate erred in law in determining the legal ownership of the suit land to the Respondent on the basis of an allotment letter that could not confer any legal title to the land
2. That the Learned Magistrate disallowed the testimony and records produced by the representatives of the Narok Town Council which would have assisted the court in determining the dispute between the parties and thus the court could not determine who was allocated the suit plot between the parties herein.
3. That the effect of Judgement of the court was to prohibit the Appellant from trespassing on the land when she had possession of the same.
4. That the Magistrate made findings on issues which were not part of the subject matter before the court and misdirected herself in making a finding that was in favour of the respondent herein without any basis in fact and in law.

When the Appeal came up for hearing it was agreed by consent of the parties herein that the same shall be disposed by way of written submissions and at this stage I must point out that despite the Appellant being accorded numerous chances to file submissions the advocates on record for reasons unknown to the court elected not to file their submissions. This I do observe is not in isolation as the Appellant had taken such a long time to have the record of Appeal filed in the matter after the court accorded its discretion to accord the Appellant time to do so. Having said so, the only option for the court is to look at the record of appeal and arrive at the judgement.

The Respondent in his submissions filed in court averred that the Appeal before the court is incompetent as the memorandum of appeal does not form part of the record of Appeal that was filed in court and further contends that the Appellant has made omnibus allegations which he has failed to substantiate and does not show how the learned magistrate erred in arriving at her decision.

The Respondent in his submissions stated he was allocated the suit land being Plot No. 95 Block 7 Narok Township on the 24th May, 1996 vide minutes No. 4 of 1996 by the then Narok Town Council and that he led evidence that he was the true owner of the suit land and that he was subsequently issued with letters to the Ministry of Lands for issuance of certificate of lease.

The Respondent further states that during the trial he had called two witnesses one Stanley Suuji, the then Town Planner and Dutti Hassan then acting Town Clerk who corroborated his evidence and hence he proved his case on a balance of probabilities after confirmation of all the documents he submitted were issued by the Narok Town Council and thus his evidence to date has not been contravened.

The Respondent stated that the Appellants defence and counter claim were based on a sale agreement drawn by an Advocate who was deceased and presented various receipts that the witness had contradicted each other.

I had read the Memorandum of Appeal, the record of appeal and the submissions filed by the Respondent and I find that the issues for determination before court are:-

1. Whether the Plaintiff had proved her case on a balance of probabilities
2. Whether the Magistrate misdirected herself on the issues of law before the court

From the onset it is important for me to state the grounds of Appeal that are contained in the Memorandum of Appeal are both of law and fact and it is worth noting that the Jurisdiction of the Court of Appeal is not to make any finding on the facts but strictly of law.

On whether the court misdirected itself on finding the respondent herein as the owner of the suit land from the Judgement of the court it is evident that the court could rely on the testimony and the documents produced by PW3 Dutti Hassan the then Acting Town Clerk to the Narok Town Council. In her testimony, the witness pointed out the suit land was registered in the names of the Plaintiff/Respondent and that he had paid all requisite payments and consent granted for him to develop the plot. The Appellant though claiming that she bought Land did not have any documents and records from the Narok Town Council to show that she was the owner.

The learned Magistrate correctly observed in Judgement; how could the Appellant be able to pay for rates and receipts issued to her when she was not registered as the owner of the plot and on this ground, I find the Respondent had discharged the burden of proof on a balance of probability and the trial court made sound legal finding to declare the Respondent as the owner of the suit land.

On whether the court was unable to declare who between the Appellant and the Respondent was the owner, I don't find anything that supports the appellant's contents and invariably the magistrate found that the Plaintiff/Respondent had proved his case on a balance of probability and this finding to my mind showed who was declared as the owner of the land.

On whether the court was correct in issuing an order of injunction from the evidence it is clear that the Plaintiff/Respondent had shown that he had documentation to the suit land which was fortified by the testimony of PW2 and PW3 who were both Senior Officials of the Narok Town Council and the custodian of all documents and register of Land registered within their area and on this basis, I find that the Plaintiff/Respondent during the trial had established all the ingredients essential for the grant of orders of an injunction and the same was sound and proper.

Having evaluated both issues of law and the evidence before the trial court I find that the Appeal herein lacks merit and I thus dismiss the same with costs.

DATED, SIGNED and DELIVERED in open court at NAROK on this 4TH day of JULY, 2019.

Mohamed N. Kullow

Judge

4/7/19

In the presence of:-

Mr Joel Nchoe for the Respondent

N/A for the Plaintiff

CA:Chuma

Mohamed N. Kullow

Judge

4/7/19