



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 80 OF 2017

WANYONYI CHEKERIE.....PLAINTIFF

VERSUS

JOHN MASAI.....DEFENDANT

JUDGMENT

The Plaintiff's Case

1. By a plaint dated **21/4/2017** and filed in court on **25/4/2017** the plaintiff sought the following orders against the defendant:-

(a) A declaration that the plaintiff is the legitimate owner of the one acre out of plot number 217 and a permanent injunction to be issued restraining the defendant by himself through his agents and or employees from stepping onto, cultivating, using trespassing onto and or dealing with that parcel of land no 217 being one (1) acre in the larger Basale Farm.

(b) Costs of this suit

(c) Any other relief court may deem fit to grant.

2. According to the plaint the plaintiff was the first allottee and beneficiary of a parcel of land measuring **3 acres** by virtue of his shareholding in Basale Farmers Cooperative Society. In **2006** he subdivided the land into three portions of one acre each. He transferred one to one John Kundu Wepukhulu and one acre to the defendant. He retained one acre for himself. However the defendant trespassed onto that remaining one acre and started farming on it in **2016**, thus denying the plaintiff user thereof and occasioning him loss to the tune of **Ksh 50,000/=** hence this suit.

3. The affidavit of George Mumali filed in this record on **9/6/2017** shows that the defendant was served with plaint and summons but he did not file any appearance or defence to the suit. This prompted the application for judgment dated **13/12/2017** filed on **14/12/2017** whereupon this matter was listed for formal proof. Hearing proceeded on **9/5/2019** when the plaintiff testified alone in his case.

4. In his evidence-in-chief, the plaintiff reiterated the matters in the plaint, which were not denied by the defendant, and produced a share certificate that showed he was a member of the Basale Farmers Cooperative Society; he also produced the original agreement vide which he sold one acre to another purchaser he referred to as John Kundu. No agreement showing the size of the land sold to the defendant was produced but various letters from the Chief's office were tendered as evidence of the dispute between the plaintiff and the defendant over one acre of land. However the defendant did not oppose the plaintiff's claim and I find that the plaintiff deserves the declaration sought.

5. The defendant is said to be still farming on the suit land. The plaintiff's evidence was that he would have produced at least **30 bags** of maize and that each would have gone for **Kshs. 3,000/=** in the market. He claimed **Kshs. 60,000/=**. Considering the absence of an actuarial report to support the plaintiff's evidence, I am of the view that he ought to be awarded some damages albeit on a nominal scale for the sole reason that denial of possession of his land must have certainly occasioned him some loss. Consequently I find that the sum of **Kshs. 50,000/=** claimed in the plaint is a reasonable sum.

6. I have considered the plaint and the evidence of the plaintiff. I consider that the plaintiff has established his claim against the defendant on a balance of probabilities.

7. I therefore enter judgment against the defendant and I make the following orders:

(a) A declaration that the plaintiff is the owner of the one acre out of the two acres occupied by the defendant in plot number 217 at Basale Farm.

(b) A permanent injunction to be issued restraining the defendant by himself through his agents and or employees from cultivating, utilizing, trespassing upon and/or dealing in any manner whatsoever with that portion of land no 217 in the larger Basale Farm measuring one (1) acre that the plaintiff did not sell to him.

(c) The defendant shall pay the plaintiff mesne profits of Kshs. 50,000/= (Kenya shillings Fifty Thousands only).

(d) The defendant shall bear the costs of this suit.

Dated, signed and delivered at Kitale on this 8th day of July, 2019.

MWANGI NJOROGE

JUDGE

18/7/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the Plaintiff

N/A for the defendant

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

18/7/2019