



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 95 OF 2018

MOSES NDIWA PELLO.....-PLAINTIFF

VERSUS

JOYCE MBUGUA.....1ST DEFENDANT

COUNTY LAND REGISTRAR TRANS NZOIA.....-2ND DEFENDANT

CHIEF LAND REGISTRAR.....3RD DEFENDANT

JUDGMENT

1. In the plaint dated **16/10/2018** and filed in this suit on **17/10/2018**, the plaintiff seeks the following prayers:-

(a) A declaration that the plaintiff is the rightful owner of the suit land known as land title No. Kitale Municipality Block 11/170.

(b) A permanent injunction restraining the 2nd and 3rd defendants from registering the lease and/or processing and/or issuing the title document to the suit land title No. Kitale Municipality Block 11/170 in the name of the 1st defendant and/or any other person other than the plaintiff.

(c) Costs and interest.

2. The Affidavit of Service sworn on **24/7/2019** by **David O. Teti**, Counsel for the plaintiff was filed into the record on **30/9/2019**. It shows that service of the summons to enter appearance upon the 1st defendant by way of advertisement in the Daily Nation Newspaper dated **3/7/2019** was effected.

3. Despite substituted service, the 1st defendant never filed any memorandum of appear or defence. She never appeared at the hearing when this case was listed for formal proof.

4. On **30/6/2021** the case against the 2nd and 3rd defendants was withdrawn with no orders as to costs.

5. **PW1 Moses Ndiwa Pello**, the plaintiff testified on **23/7/2021** and adopted his witness statement dated **16/10/2018** as his evidence-in-chief. According to the plaint and the plaintiff's evidence, his claim is that he is the legal and beneficial owner of Land Title No. **Kitale Municipality Block 11/170** having been allocated the same vide a letter of allotment dated **13/1/1997** and he has been in possession and use since **1997** to date; that the 1st defendant encroached on the suit land and was in the process of obtaining a title deed. The plaintiff produced his ID card as **P. Exhibit 1**, the certified copy of the letter of allotment dated **13/1/1997** as **P. Exhibit 2**, the **PDP** as **P. Exhibit 3**.

6. The plaintiff also produced a certified copy of a payment receipt dated **8/6/2021** as **P. Exhibit 4** in respect of suit property. He produced a letter dated **22/9/2016** as **P. Exhibit 3** showing he took possession since **1997**. He also produced a letter dated **25/7/2016** (**P. Exhibit 6**) which he wrote to County Land Management complaining the interference on his plot. He produced rates payment request and **2021** rates clearance certificate as **P. Exhibit 7** and **P. Exhibit 8** respectively.

7. The plaintiff's evidence was not controverted. In this court's view however the plaintiff adduced no independent evidence that his allocation of the suit land was under threat by any person.

8. The alleged encroachment by the 1st defendant was not proved. The 1st defendant's alleged attempts to obtain a title deed to the land were not established.

9. The very existence of the 1st defendant has not been established on a balance of probabilities. In the absence of proof of such interference, I find no reason why the plaintiff can not proceed to have his document registered if he was allocated the land. I find this to be a case in which the court can not be certain as to whether the 1st defendant existed.

10. As the plaintiff has withdrawn his claim against the only defendants who are certain to exist I find that there are no orders that can be granted in this case. If I were to grant the first prayer in the plaint I would do so in the absence of any credible evidence from the 2nd and 3rd defendants.

11. It is the proper position in law that the plaintiff must establish his claim on a balance of probabilities even where no defence has been filed and I do not think the plaintiff has done so in this case. See the case of Daniel **Toroitich Arap Moi Vs Mwangi Stephen Mureithi & Another 2014 eKLR**.

12. For the reasons stated above I find that the plaintiff has not proved his case on a balance of probabilities and the instant suit is hereby dismissed with no orders as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 30TH DAY OF SEPTEMBER, 2021.

MWANGI NJOROGI

JUDGE, ELC.