



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

LAND SUIT E & L NO. 47 OF 2014

LEILA WAMBUI ABDUL.....PLAINTIFF

-VERSUS-

PETER K. MARU.....DEFENDANT

JUDGEMENT

Leila Wambui Abdul (hereinafter referred to as the Plaintiff) came to court by way of plaint against Peter. K. Maru (hereinafter referred to as the defendant praying for orders of eviction and costs of the suit. She claimed that the defendant entered the suit property L.R. N. 8451/15, and 8451/16 after a sale agreement with her husband. The parcels of land are fully developed with permanent structures and many trees. The Plaintiff has asked the defendant to vacate but the defendant has refused. The Plaintiff and her family moved to Nairobi in or about 2006 after the defendant refused to vacate the land and instead started threatening the plaintiff and he family thereby making the plaintiff live in fear. The Plaintiff has, since moving out of the land, made incessant requests to the defendant to vacate the land but the defendant has been and continues claiming that he purchased the said parcels of land from the deceased which fact is unknown to the plaintiff and her family.

In the statement of defence the defendant states that he purchased the suit properties from the late Abdul Kipyegon Ngeno and paid full consideration. At the time of the purchase, the late Abdul Ng'eno was not in actual occupation of the said land parcel but had left the farm in the care of a neighbour one Peter Jasii. The Defendant took immediate possession in October 2001 reared cattle therein and engaged the said Peter Jasii as his caretaker. The Defendant kept paying the late Abdul Ng'eno in installments as was the preferred mode of payment by the parties.

Whenever the deceased received any monies from the Defendant he signed in acknowledgement on the Defendant's diary. The Defendant and the deceased operated on mutual trust and did not craft a formal agreement but the deceased signed for every payment he received from the Defendant. The Defendant has been in uninterrupted and peaceful occupation of the aforesaid land parcels since October 2001 to the date of filing the suit.

The vendor Abdul Kipyegon Ng'eno died on 25/7/2004 before effecting transfer in favour of the Defendant. By the time of his demise the deceased had received a total sum of Kshs. 1,200,000/= from the Defendant being total consideration paid.

Upon the deceased's demise, the Defendant continued to make payments towards the purchase consideration to the Plaintiff herein who is the deceased's wife. The Plaintiff received a total consideration of Kshs. 160,000/= from the Defendant towards the purchase. To the date of filing the suit, the Defendant owed the Plaintiff the sum of Kshs. 640,000/= which he intends to clear once the Plaintiff avails the original title deeds and executes transfer forms in favour of the transaction.

The Defendant avers that to finance the purchase of land parcel numbers L.R. 8451/15 and 8451/16 from the deceased, the Defendant sold his land parcel No. West Pokot/Siyot/260 to Hon. Samuel Moroto (Member of National Assembly, Kapenguria Constituency) who paid the sum of Kshs. 600,000/= which he paid to the deceased on 12th October 2011.

The Defendant avers that he took occupation and possession of land parcel numbers L.R. 8451/15 AND 8451/16 IN October 2001 to the date of filing suit with the full consent and authority of the deceased and the plaintiff. The Defendant avers that the Plaintiff has always been aware of the Defendant's purchase of land parcels number 8451/15 and 8451/16 and even received part of the purchase consideration. The Defendant counter-claims for an order of specific performance compelling the Plaintiff to surrender original title deeds and transfer documents in respect of land parcel numbers 8451/15 and 8451/16 and to execute transfer forms in favour of the Defendant.

The defendant also prays for a declaration that he is the sole proprietor of land parcel numbers 8451/15 and 8451/16 and an order that he has acquired title to land parcel numbers 8451/15 and 8451/16 by adverse possession having occupied the said land parcels continuously and peacefully and without interruption since October 2001 to date. The Defendant also prays for costs of the counter-claim and costs of this suit. Demand and notice of intention to sue is denied. In the reply to defence and defence to count-claim, the plaintiff denies the contents of plaint as particularized in paragraphs a) – Z of the said defence. The Plaintiff states that the defendant entered the plaintiff's land in 2002 and the deceased died in 2003.

In the Defence to counter-claim, the Defendant states that the defendant is not entitled to an order of specific performance since he has not proved the existence of any sale agreement between himself and the deceased husband of the plaintiff nor has he given any names of witnesses to the alleged payments.

The plaintiff avers that the defendant cannot be declared the sole proprietor of LR No. 8451/15 and 8451/16 herein which he did not pay for and which parcels if at all they were paid for, which is vehemently denied, were not fully paid for at least according to the defendant's own admission as there is no sale agreement to show the purchase price.

The plaintiff in response to paragraph 10 of the counter-claim avers that in 2002 the defendant himself wrote to the deceased while alive over the parcels of land and soon after the plaintiff herein became the administrator in 2004, the plaintiff's advocates continued writing demands and notices from 2006 to date and therefore the defendant cannot be heard to claim adverse possession as against the plaintiff. The defendant cannot be entitled to costs of a case he has not proved. The defendant has never made any demand or given any notice of intention to sue. The suit was dismissed for want of prosecution and the application to reopen the same was dismissed by this court. What remained was the counterclaim and reply to defence and defence to counter claim.

PW1 Peter Maru testified that he was a pastor with AIC. The plaintiff is wife to Abdul Ng'eno. He bought the land in dispute in 2001. There was no agreement. He paid the money. He produced the acknowledgement of payment. He produced photos. He produced a title in the names of deceased. He purchased 14 acres and has cattle on the land. He lives on the land with family. He has lived on the land with family. On cross-examination by Mr. Miyianda Learned counsel for Plaintiff, he states that there was no written agreement. **DW2, Paul Lagat** states that, he was the Assistant Chief Kebarigo Sub location between 1988-2004. He knows the defendant. That the said Abdul Ngeno sold the land to the defendant in 2001. That the defendant has been in possession since 2001.

I have considered the evidence on record and submissions on record and do find that the Defendant has proved his case on a balance of probabilities that he has been in possession of the suit property from 2001 to the date of filing suit on 20/2/2014 and to-date. He took possession after purchasing the property but there is no sale agreement. The defendants claim based on the agreement of sale fails because he did not produce any in writing. Section 3 (3) of the Law of Contract Act Cap 23 Laws of Kenya provides: This court further finds that there is no evidence of the sale agreement between the plaintiff and the defendant as envisaged by Section 3 (3) of the Law of Contract Act Cap 23 Laws of Kenya which provides:-

“No suit shall be brought upon a contract for the disposition of an interest in land unless:-

(a) The contract upon which the suit is found-

(i) Is in writing

(ii) Is signed by all the parties thereto; and

(b) The signature of each party signing has been attested by a witness who is present when the contract was signed by such party.”

However, the defendant has pleaded adverse possession. The law of adverse possession is provided in the Section 7 of the Law of Limitation Act thus:

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

I do find that the defendant has established on a balance of probabilities that he has been in un-interrupted possession of the suit property since the year 2001 and that when the suit was filed in 2014, more than 12 years had lapsed. I do find the Plaintiff's suit time barred. I do allow the counter claim and do grant orders that the defendant has acquired title to land parcels number 8451/15 and 8451/16 by adverse possession having occupied the said parcels of land continuously and peacefully and without interruptions since October 2001 to the date of filing the suit. Costs of the suit to the defendant.

SIGNED, DATED AT KISUMU THIS 20TH DAY OF SEPTEMBER, 2021.

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

DELIVERED AND SIGNED AT ELDORET THIS 29TH DAY OF SEPTEMBER 2021

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE