



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 107 OF 2017

MARGARET NABUIN LOMATONG.....PLAINTIFF

VERSUS

SYLVIA ABEI KOSIYAE.....1ST DEFENDANT

JACKSON EKIRU KOSIYAE.....2ND DEFENDANT

JUDGMENT

1. In her plaint dated and filed in this suit on the **19/6/2017** the plaintiff seeks several orders against the defendants jointly and severally. The orders are set out herein below verbatim:-

a. A declaration the plaintiff is the sole owner of the land comprised in Lomatong family measuring 20 hectares within Lodwar and further that the 1st and 2nd defendants and who have no proprietary interest whatsoever in the said land be ordered to move out therefrom and failing which the 1st and 2nd defendants and anyone else claiming under them be forcefully evicted therefrom.

b. An order that the 1st and 2nd defendants do move out of the land comprised in Lomatong family land measuring 20 hectares within Lodwar and failure to which they be forcefully evicted therefrom.

c. A temporary and permanent injunction.

d. Costs.

e. Interest.

2. The plaintiff's case is that her family has been in occupation of the suit land and which is their ancestral land, being approximately **20 ha** within Lodwar; that the plaintiff's parents' and plaintiff's husband's remains were interred on the suit land; that the plaintiff and her husband lived on the said land since **1970** and bore and brought up children while living thereon, and that they moved out of the suit land only in late in the year **1980** for reasons of convenience as the suit land is far from Lodwar town. It is alleged that the suit land is the plaintiff's family heritage and loss thereof would affect an entire generation. In **2017** the plaintiff learnt through her area chief that the 1st defendant had invaded the land, and despite not having any right to do so, sold it to the 2nd defendant hence the suit.

3. On **11/12/2017** the hearing of this suit proceeded to formal proof when the plaintiff testified. On **21/3/2018** the matter came up for further hearing. However neither the plaintiff nor his advocate appeared. Mr. Wafula was holding brief for Nasike for defendant. Mr. Wafula prayed for matter to be stood over generally. The court dismissed the suit for want of prosecution.

4. On **12/4/2018** this matter came up for the *inter partes* hearing of the application dated **26/3/2018**. There was no appearance for the defendant. The hearing proceeded and the plaintiff's counsel urged her application. By a ruling dated **13/4/2017** the order made on **21/3/2018** dismissing the plaintiff's suit for want of prosecution was set aside and the suit was reinstated and be heard on merit.

5. The suit was slated for further hearing on **23/5/2018**. The court record does not show what happened on **23/6/2018** and on **15/6/2018**.

6. On **4/2/2019** this matter was fixed for hearing on **9/5/2019**. On **9/5/2019** the defendant was absent and the matter was adjourned to **1/10/2019** with leave granted for the plaintiff to file and serve documents within **14** days.

7. On **1/10/2019** the defendants were absent and the hearing took place and the plaintiff closed her case. The matter was adjourned to **20/2/2020** for the hearing of the defence case. On **20/2/2020** the defendants and their counsel were absent. Mr. Barongo holding brief for Mr. Oduor for plaintiff prayed that the defence case be deemed as closed. The court closed the defendants' case and ordered the plaintiff to file submissions and serve within **14** days. Judgment was slated for **31/3/2020**.

8. None of the parties filed any written submissions. This court must therefore rely on the pleadings, the evidence and the documents on the record. I have considered the plaintiff's evidence and documents on record.

9. In this case the subject land is only identified by the portion formerly occupied by the plaintiff. It is not formally described. No boundary marks or features are cited. However, in my view though the land is not registered, a claim may arise out of possessory rights. In view of the unregistered nature of the land, any orders issued in such a case as this must be considered as strictly regulating the rights of only the parties to the suit and not as against the whole world.

10. I find that the plaintiff's claim against the defendant is unopposed. In view of the contents of the plaint, the oral evidence of the plaintiff and the documents produced, I find that the plaintiff has established her claim against the defendants on a balance of probabilities.

11. I therefore enter judgment in favour of the plaintiff against the defendants jointly and severally and I issue the following final orders:

a. A declaration the plaintiff is by virtue of her family's former occupation of the suit land, entitled to possession of the land comprised measuring approximately 20 hectares within Lodwar sold by the 1st defendant to the 2nd defendant and the defendants have no interest whatsoever in the said land.

b. The defendants shall vacate that land and failing which they and anyone else claiming under them be forcefully evicted therefrom.

c. An order of permanent injunction restraining the defendants from howsoever interfering with the suit land.

d. The defendants shall bear the costs of this suit.

It is so ordered.

Dated, Signed and Delivered via electronic mail at Nairobi on this 21st day of May, 2020.

MWANGI NJOROGE

JUDGE, ELC, KITALE.