



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA

CIVIL APPEAL CASE NO.25 OF 2013

(ARISING FROM KIMILILI SRM CIVIL SUIT NO.24 OF 2012)

BRAMWEL NAMUTALA MATUI.....APPELLANT

VERSUS

ROSE NASIMIYU MULONGO.....RESPONDENT

JUDGEMENT

[1]. The Appellant Mr. Bramwel Matui filed this appeal against the decision of the Kimilili Resident Magistrate (Hon. S.K. Ngii RM) delivered on 12/4/2013 in which the appellants claim in Kimilili SPM Civil Suit No.24 of 2012 was dismissed.

[2]. He sets out various grounds of Appeal. The salient grounds inter alia, that the learned Magistrate erred in relying on provisions of law and fact which were irrelevant to the dispute and that he ignored the fact that the appellant was an innocent purchaser without notice further that the claim of the respondent was that of a licensee interest. The original owner and finally that the respondent was a trespasser on title No. Elgon/Namorio/815 now passed on to the Appellant. He relied on the case of Hassan Kweyu Olango -vs- Kati Olango Bungoma Civil Suit No.148 of 2002.

[3]. The respondent opposed the appeal. He averred that the Learned Magistrate was right when he relied on the provisions of *section 30(g) of the Registered Land Act Chapter 300 Laws of Kenya (now repealed)*.

On the basis that the respondent was in occupation at the time of transfer of title to the appellant and thus her rights were as such protected. The respondent submitted that the trial Magistrate did not err in his findings.

The respondent relied on the case of Kanyi -vs- Muthiora (1984) KLR 712 where it was held that the respondent had agents against the appellant stemming from possession and occupation of part of the land which amounted to overriding interest not required to be noted on the register and that the appellants proprietorship was subject to it as per section 30(g) of RLA.

[4]. On perusal of the record it is apparent that the learned Magistrate did not err in relying on section 30(g) of the Registered Land Act. In my view it cannot be argued that section 30(g) of RLA is irrelevant to the circumstances of this case.

It is also evident from the record that the appellant was aware of the fact that the respondent was living on the suit land with her husband and her children. She has continued to live on the suit land. The respondent is a wife of the son of the vendor to the appellant. There is no evidence on record to show that

he ever stopped living on the land in his life time. When he died, he left his wife and children on the suit land. It can neither be said that he had a licensee interest nor can it be argued that he was a trespasser in land parcel Elgon/Namorio/815. This case is clearly distinguishable from Hassan Kweyu Olango -vs- Kati Olango where the respondent came to invade the land after she had moved out of the suit land.

[5]. The trial Magistrate was right in holding that the respondent held an overriding interest on the area he occupied. He was equally right when he held that the appellant purchased the land subject to the respondent's said interests. It is upto the respondent to approach the ELC Court for the necessary orders to secure the title for the portion he occupied. In this regard, I wish to say no more as the issue is not before me now.

[6]. In the final analysis, I find that the learned trial Magistrate did not misdirect himself or act under the wrong principals of law.

The appellant's appeal is therefore dismissed with costs to the respondent.

Judgment read in open Court.

DATED and DELIVERED at BUNGOMA this 10th day of March , 2017

S.N. MUKUNYA

JUDGE

In the presence of:

Court Assistants - Chemtai/Joy

Mr. Musumba - For Mr. Bw Ochiri

Gachuru - For Mr. Areba for the Respondent