



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 104 OF 2014

PASCAL WAFULA WAMBULWA.....PLAINTIFF

VERSUS

JOTHAM MONYO.....DEFENDANT

J U D G E M E N T

INTRODUCTION

1. The Plaintiff brought this suit against the defendant seeking a declaration that he is the sole proprietor of LR NO. Trans- Nzoia/Kimondo Block 6/Nalulingo/267 (suit land). He also sought an order of eviction against the defendant from the suit land.
2. The defendant who was duly served with summons to enter appearance neither entered appearance nor filed defence. The hearing therefore proceeded by way of formal proof.

PLAINTIFF'S CASE

3. The Plaintiff testified that he and the defendant were members of Trans-Nzoia Investment Company Limited which was a land buying company. The company owned land No. 6486/5. The members had been settled on the company land before sub-division was carried out. In 1993, the company sub-divided its land and shared it amongst its members. The plaintiff happened to be given land where the defendant had been cultivating before the subdivision. The plaintiff ploughed and planted the portion he had been given in 1994. In 1995 the defendant prevented him from utilising the same to-date.
4. The plaintiff went and engaged the services of a private surveyor who went to the ground and ascertained the position of the suit land. The defendant was given plot No. 262. The surveyor found that the defendant had taken over the plaintiff's plot and had constructed a church on it and was at the same time cultivating part of it.

ANALYSIS OF EVIDENCE

5. The plaintiff produced a copy of title [exhibit.1] which shows that he is the registered owner of the suit property. The plaintiff had sought the intervention of the District Officer Endebess who wrote a letter asking the defendant not to interfere with the plaintiff's land. This letter was produced as exhibit 2. The plaintiff produced a share certificate showing that he was a member of Trans-Nzoia Investment Co. Ltd [exhibit 3].

6. The surveyor who went to the ground is PW2 Ben Wanyama Situma. This witness testified that he was asked by the plaintiff to go to the ground and ascertain the position of his plot. The witness obtained the area map and located the suit land. He found out that the defendant who owns plot No. 262 had taken over the suit land and had put up a church on it and was cultivating on the same. He compiled his report which he produced as exhibit 4.
7. On 2/5/2014 the plaintiff wrote a demand letter [exhibit 5] to the defendant. The area map was also produced [exhibit 6] showing the plots on the ground. It is clear that the defendant is not supposed to be on the suit land. When survey process is done in an area where people had already been settled before formal survey, there is bound to be some movements of people from the places they had been occupying. If the defendant happened to be moved, he cannot insist on remaining on the plaintiff's land. The defendant has his own land elsewhere.

DETERMINATION

8. I find that the plaintiff has proved his case against the defendant on a balance of probabilities. A declaration is hereby issued that the plaintiff is the sole proprietor of LR NO. Trans-Nzoia/Kimondo Block 6/Nalulingo/267. The defendant should voluntarily move out or be evicted therefrom without any recourse to the court for purposes of eviction. The plaintiff shall have costs of this suit.

Dated, signed and delivered at Kitale on this 12th day of February, 2015.

E. OBAGA

JUDGE

In the presence of Mr Kiarie for plaintiff. Court Clerk Kassachoon.

E. OBAGA

JUDGE

12/2/2015