



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 74 OF 2011

RAPHEL KIBUSIA PLAINTIFF

VERSUS

MAUA NAIBEI SIRIRIA

PETER SIRIRIA..... DEFENDANTS

J U D G E M E N T

INTRODUCTION

1. The plaintiff is the registered owner of LR. No.Saboti/Saboti / Block 6/Sukwo/151 (Suit land). The plaintiff filed this suit against Maua Naibei Siriria and Peter Siriria as the first and second defendants respectively. The first defendant who was mother to the second defendant has since died and the suit against her withdrawn and her name struck out from the record. The plaintiff is claiming the following reliefs:-

- a) A declaration that he is the sole registered owner of the suit land.
- b) An order of eviction against the defendant and all those claiming through him.
- c) Costs and interest.

2. The defendant filed defence to the plaintiff's claim and raised a counter-claim in which he sought cancellation of the title held by the plaintiff and costs of the counter-claim.

PLAINTIFF'S CASE

3. The plaintiff testified that he is the registered owner of the suit land. He testified that soon after independence, he together with other individuals came together and incorporated a company called Sukwo Farmers Company Limited. The company bought land from the departing European settlers. The farm known as Sukwo farm was subdivided and each shareholder got his own title. He produced a copy of title deed as exhibit 4.

4. The plaintiff had filed a case against the defendant's father in 2001. This was Kitale HCC.No159 of 2001. This case was dismissed for want of prosecution. In 2005 he again filed another case against defendant's father. This was Kitale HCCC.No.111 of 2005. This case was too dismissed for want of prosecution. He finally filed this case against the defendant and his mother after the defendant's father

died. In his evidence in court, the plaintiff testified that it is the defendant who is cultivating the suit land though he does not stay there.

DEFENDANT'S CASE

5. In his pleadings the defendant contends that he has been on the suit land since 1972. He also contends that the plaintiff was registered as owner of the suit land fraudulently with full knowledge that he was on the land. In his evidence before court, the defendant testified that he resides on plot No.153 which belongs to his father and that he neither stays on the suit land nor cultivates it.

ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION

6. I have gone through the pleadings filed herein, the evidence and submissions by counsel. There is no contention that the plaintiff is the registered owner of the suit land. The issues which emerge for determination are firstly whether the plaintiff obtained his title in a fraudulent manner . Secondly is the defendant or anyone claiming through him entitled to remain on the suit land?

7. There is evidence that the plaintiff was a member of Sukwo Farmers Company Limited. He produced receipts which were issued to him as plaintiff exhibit 1(a) to (n). He produced a receipt for survey fees exhibit 2. After the farm was subdivided, he was given plot No. 151. He processed and obtained title to the same (exhibit 4). The defendant's father who was also a shareholder of the farm was given plot No.153. The defendant in his evidence in court testified that he resides on plot No. 153 which belongs to his father. Though the defendant claimed in his defence that the plaintiff obtained his title in a fraudulent way, he did not adduce any evidence to show that the plaintiff obtained his title fraudulently. I therefore find that the plaintiff did not obtain his title in a fraudulent way.

8. The plaintiff has been battling to have the defendant and his family move out of the suit land. The battle began in 2001. He wanted the defendant and his family to move out of the suit land. The defendant contends in his pleadings that he has been on the suit land since 1972. Though he testified that he does not reside on the suit land or cultivates it, I find that this is just a mere denial and that it contradicts his pleadings. The defendant or anyone claiming through him has no basis for remaining on the suit land or even cultivating it.

DETERMINATION

I find that the plaintiff has proved his case against the defendant on a balance of probabilities. The defendant has not proved his counter-claim. I make the following orders:-

- a) A declaration that the plaintiff is the sole registered owner of LR.No.Saboti/Saboti/Block 6/Sukwo/151.
- b) Eviction of the defendant or anyone claiming under him from the suit land.
- c) An order dismissing the defendants counter-claim,
- d) The defendant to pay costs of the suit as well as counter-claim to the plaintiff.

Dated signed and delivered at Kitale on this 13th day of May 2015.

E. OBAGA

JUDGE