



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 3”A” OF 2013

JAMES BENARD ONGUKO PLAINTIFF

VERSUS

JONATHAN NAFTALI NGARE

Alias JOSEPH NGARE..... DEFENDANT

R U L I N G

1. The applicant brought a notice of motion dated 21st February, 2014 under the provisions of Order 2 Rule 15 (a) and section 7 of the Limitation of Actions Act. The applicant contends that the respondent's suit does not disclose any reasonable cause of action and that in any case, the respondent's claim is barred by limitation of time.
2. The respondent had sold the applicant three acres of land which were to be hived off from Trans-Nzoia/Makutano/29. The sale occurred on 24/9/1996. The land was duly subdivided and the applicant obtained his title on 24/7/1997. The applicant's portion became LR NO. Trans – Nzoia/Makutano/40 measuring 1.214 hectares.
3. The defendant/Respondent moved to court claiming that the applicant is occupying four acres when he bought 3 acres. This is what prompted the applicant to file the present application.
4. The respondent in his replying affidavit sworn on 31/3/2014 contends that he did a survey of the applicant's land at his own cost and found that the applicant is occupying 4 acres instead of three acres.
5. On 17/12/2013, the respondent applied for an order that the County Surveyor do visit the disputed land and ascertain its acreage. The District Surveyor did visit the land and made his report dated 25/3/2014. The surveyor could not determine the acreage because he found out that the plot in issue fronts the Kitale Webuye Highway. According to the map held by the County survey office Trans-Nzoia, the road reserve is 60 metres but the current width of the road is only 40 metres.
6. I have considered the applicant's application as well as the replying affidavit by the respondent. The issues which emerge for determination are firstly, does the respondent's suit disclose a reasonable cause of action and secondly is the respondent's suit time barred?
7. The respondent contends that the applicant is occupying one acre in excess of what he bought. There is no basis upon which the respondent is making this claim. Though the respondent claims that he surveyed the land in issue and found that it is 4 acres, he did not provide the alleged survey findings. It was expected that the respondent having been faced with an application for striking out his claim, he should have proved that indeed the land is more than three acres. The applicant has title which is 1.214 hectares which translates to about 3 acres.
8. The respondent signed the necessary mutation forms which were used to process title. The respondent is not a neighbour of the applicant. The issue therefore is not a boundary dispute. I find that the suit herein does not disclose a reasonable cause of action.

9. The respondent sold the land in 1996. The applicant obtained title in 1997. The respondent is coming to claim the alleged one acre after 17 years. Even if it were true that the land is more than three acres, his claim is time barred. The court takes judicial notice of the fact that land is expressed to be approximate. It is never exact. The land can either be less or more. A person who has sold his land and gone away cannot wake up one time after a long period and demand for a re-survey. I find that the respondent's suit does not only fail to disclose a reasonable cause of action, it is also caught by limitation if at all there is any excess land above the three acres which the applicant bought. The respondent's suit is hereby struck out with costs to the applicant.

It is so ordered.

Dated, signed and delivered at Kitale on this 5th day of May, 2014.

E. OBAGA,

JUDGE

In the presence of Mr Onyancha for Mr Samba for defendant. Court Clerk – Kassachoon.

E. OBAGA,

JUDGE

5/5/2004