



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 93 OF 2013

MARY CHERONO CHEBABUN.....PLAINTIFF

VERSUS

WILSON RONO.....1ST DEFENDANT

JOSEPH RONO.....2ND DEFENFANT

JUDGMENT

1. In the plaint dated **10/7/2013** which was filed on the same date, the plaintiff seeks the following orders against the defendants:-

(a) **An order of permanent injunction restraining the defendants by themselves, their agents, servants and/or anybody purporting to act for them or through them from trespassing upon and demolishing structures or buildings on the plaintiff's commercial plot measuring 55 feet x 55 feet located at Sikhendu Market and/or in any manner interfering with the plaintiff peaceful occupation and use of the said plot.**

(b) **Costs of this suit.**

(c) **Interest on (b) above at court rates.**

THE PARTIES PLEADINGS

The Plaintiff's Case

2. According to the plaint the plaintiff is the lawful owner of the suit land, a plot measuring **55 by 55 feet** having purchased the same from one Jonathan Cheruiyot Chebabun (who later turns out, according to the plaint and the plaintiff's evidence, to be her biological father) on **20/1/2011** for **Ksh 100,000/=**. The defendants went to the plot on **4/7/2013** and began demolishing the structures thereon and ordering the tenants to vacate the premises. They alleged the land and the buildings belonged to the 1st defendant the brother to the 2nd defendant (the latter who according to the evidence in this suit turned out to be the husband to the plaintiff.)

The Defendants' Case

3. The defendants filed a joint defence dated **22/7/2013** on the same date denying the claim and stating that it is the 2nd defendant who purchased the suit property from Jonathan.

THE EVIDENCE OF THE PARTIES

The Plaintiff's Evidence

4. The plaintiff testified on **28/9/2015**. Her evidence is that the 2nd defendant is her estranged husband; that she bought the land from her father in **2011**; that in **May 2013** the defendants came and asked the tenants to vacate but one tenant declined to do so on the basis that the property belonged to the plaintiff; that she reported that incident to the acting Assistant Chief; that the Chief later called her and informed her that the property had not been sold to the 1st defendant; that later in **2014** she saw the defendant and the chairlady of the Sikhendu Market proceed to the suit premises where they began demolishing the structures thereon; that she reported to the police who summoned the 2nd defendant who never produced any documents in respect of ownership of the property and that at the moment the premises are unoccupied.

5. Upon cross examination by Mr. Bororio the plaintiff acknowledged the 2nd defendant to be her estranged husband against whom she had

brought a children's case; that the documents to the suit land were issued in the name of the 2nd defendant and that the 2nd defendant is still educating her children who are staying with him.

6. The plaintiff's evidence comprised two agreements, an original one between her and her father and a photocopy of the one between her father and one Mary Namachemo.

7. **PW2 Jonathan Cheruiyot Chebabun** testified on **26/2/18**. His evidence is that he sold his daughter, the plaintiff the suit premises and that he had not built on the premises. He corroborated the plaintiff's evidence that the 2nd defendant was still her husband; he added that they have 3 children. He however denied having sold the land to the 2nd defendant. However on cross-examination the witness seemed to falter and controvert some of the evidence earlier given by himself and by the plaintiff when he stated that he sold the land in **2008** while in his statement the year is **2011**.

The 2nd Defendant's Evidence

8. The 2nd defendant testified on **8/10/18**. His evidence is that the plaintiff is his wife; that they lived together for about **20 years** and then separated; that the plaintiff's father sold him the suit property in **2008**; that after the couple separated the plaintiff's father re-sold the suit property to her; that his wife left with the agreement when they separated; that he obtained the clearance certificate from the surveyor; that when he failed to secure school fees he sold the plot.

9. **DW2, Elijah Ngetich** testified on **29/10/2018**. His evidence is that the plaintiff and the 2nd defendant are known to him as wife and husband respectively; that in **2008** the plaintiff's father sold the 2nd defendant the suit premises for **Ksh 100,000/=** and that he witnessed the agreement in the presence of the plaintiff and two other persons.

DETERMINATION

Issues for Determination

10. The issues that arise in this suit are as follows:

(a) *Who purchased the suit land from the plaintiff's father?*

(b) *What orders should issue?*

(a) *Who purchased the suit land from the plaintiff's father?*

11. The plaintiff called her father as her only witness. I find his evidence not reliable. After separation with her husband the plaintiff returned to **PW2's** house. They have a relationship of father and daughter. I do not view PW2 as an independent witness. Furthermore, he faltered in his evidence as stated herein before.

12. On the other hand the 2nd defendant called an independent witness, who is not an interested party in the matrimonial dispute between the plaintiff and the 2nd defendant and whose evidence I therefore find more reliable and credible.

13. Besides the plaintiff never produced any other evidence save the agreement between her and her father as **PExh1**. That agreement is dismissed by the 2nd defendant as having been made after the plaintiff returned to her father's home after separation with the 2nd defendant.

14. In contrast the 2nd defendant produced an original receipt for survey fees in respect of **plot number 53(G)** dated **26/10/2010**, an original clearance certificate for the same plot signed by the chairman, Chepkorok Farm Ltd, and issued on **25/10/2010**, an original receipt dated **25/10/2010** for the clearance certificate and an original agreement between the 1st defendant and the 2nd defendant dated **20/2/2012** in respect of the suit premises. He also produced an original marriage certificate showing that he and the plaintiff were married on **19/10/1999**.

15. There is no other reason why the documents produced as **D. Exhibit 2(a)** and **D. Exhibit 4** could have been issued to the 2nd defendant and in his name save that he had purchased the suit land before the survey process was initiated. I therefore find that the 2nd defendant is the person who purchased the land from the plaintiff's father.

CONCLUSION

(b) *What orders should issue?*

16. I find the plaintiff's claim against both defendants herein to be without merit. The plaintiff's suit against both defendants is hereby dismissed with costs.

Dated, signed and delivered at Kitale on this 29th day of January, 2019.

MWANGI NJOROGI

JUDGE

29/01/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bororio for defendant

Mr. Mokuu holding brief for Okile for plaintiffs

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

29/01/2019