



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU**

**ELC NO.50 OF 2016**

**MIKA CHEPKAITANY.....PLAINTIFF**

**VERSUS**

**MARTHA KIMOLOIRO.....DEFENDANT**

**JUDGMENT**

***(Suit by plaintiff to restrain defendant from the suit properties; defendant filing counterclaim and claiming that she is entitled to one acre of land after purchasing it from the original owner; sale of the one acre having taken place more than 20 years to the filing of the counterclaim; plaintiff having held title for over 20 years; claim by defendant time barred; in any event claim by defendant cannot succeed for want of Land Control Board consent; defendant's counterclaim dismissed; plaintiff entitled to have the defendant permanently restrained from the suit properties).***

1. This suit was commenced through a plaint which was filed on 23 February 2016. The plaintiff has averred that he is the registered proprietor of the land parcel Kampi Ya Moto/Kampi Ya Moto Block 1/983 and 984 (the suit properties) having purchased the said parcels of land in the years 1994 and 1996 from one William Chepkonga. He pleaded that the defendant has intermittently been interfering with his parcels of land claiming to have purchased one acre from the same William Chepkonga. In the suit, the plaintiff wishes to have orders permanently restraining the defendant from the suit properties together with costs and interest.

2. The defendant filed defence and counterclaim vide which she pleaded that she is the legal owner of one acre of the suit properties having purchased the one acre from William Chepkonga, on 18 December 1991.

3. In his evidence, the plaintiff testified that the land was previously owned by the father of Mr. Chepkonga, and was 15 acres. This land was then subdivided into two amongst his two sons, with each getting 7.5 acres. It is this share of Mr. Chepkonga that was sold to him. He first purchased from William Chepkonga, 3 acres in the year 1994, the land parcel No. 984, and in the year 1997, he purchased the other 4.5 acres. After purchase, he moved into the properties, fenced them, and commenced farming activities. He stated that the defendant has been interfering with his possession and has tried to gain entry about six times claiming that Mr. Chepkonga sold to him the said land. He testified that when he purchased the land, the same was vacant and the defendant was not resident on it. He stated that he has no knowledge of any purchase by the defendant of the same land. He stated that the one acre claimed by the defendant lies on both parcels No. 983 and 984.

4. In her evidence, the defendant testified that she purchased the one acre on 18 December 1991 at Kshs. 30,000/= and she produced the sale agreement. She stated that she fenced the land in the year 1992, built a small house and kept a caretaker as she was not residing on this land. She stated that she cultivated the land in the years 1992 and 1993 and planted maize and beans. She however mentioned that in the year 1992, the plaintiff destroyed her structure, and in the year 1994, she built another "mabati" structure which was also destroyed by the plaintiff. She complained that whenever she would cultivate, the plaintiff would proceed to destroy her crops and it has been like that to date. She reported to Mr. Chepkonga in the year 1994, and they wrote an agreement dated 13 May 1994 before the Chief. She stated that when she purchased the one acre, the land was still 7.5 acres and she did not know when it was subdivided.

5. DW-2 was Mr. William Chepkonga. He testified that the whole land was initially 15 acres which was subdivided equally between himself and his brother Michael Kimityon after inheriting the same from their father. He stated that in the year 1991, he sold one acre to the defendant, and that the defendant took possession, fenced the land, and built a structure. He stated that he leased the rest to the plaintiff although they did not have anything in writing for the lease. He denied having sold 7.5 acres to the plaintiff. He stated that the plaintiff only brought to him some documents which he signed but did not know their contents. He stated that he has never held title in his name and that title was joint with his brother. Cross-examined, he stated that the documents that he, the plaintiff, brought to him to sign, were meant to subdivide the land. He contended that to date, he does not know whether the land had been subdivided. He stated that his brother also complains that he has not been given title to his land although he has not made any formal complaint. He stated that the lease that he had with the plaintiff was an oral lease for 7 years starting in the year 1994 and that the rent was Kshs. 2,000/= per year. He admitted that the plaintiff is still in possession although he does not pay him the rent and he affirmed that he does not want any money from him. He admitted that he has not complained to the authorities nor sued the plaintiff for keeping possession of the land. He explained that the 1994 agreement that he had with the defendant was so as to compensate the defendant because the plaintiff was on the land. He insisted that he informed the plaintiff that he has sold one acre to the defendant. The instruments that transferred the properties to the plaintiff were put to him and he admitted that the signatures therein were his signatures.



**In presence of : -**

Ms. Amulabu holding brief for Mr. Ocheing' Gai for the plaintiff.

Ms. Wairimu holding brief for Mr. Mongeri for the defendant.

Court Assistant: Nelima Janepher.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**