



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELCA CASE NO. 73 OF 2017

JOHN ODONGO..... APPELLANT

VERSUS

JOYCE IRUNGU MUHATIA.....RESPONDENT

JUDGEMENT

The appellant herein being dissatisfied with the whole judgment of Honourable M.I.G. Moranga – PM delivered on the 28th day of April, 2014 in Kakamega CMCC No. 263 of 2007 wishes to appeal from the same on the following principal grounds:-

1. That the learned magistrate erred both in law and fact in holding that the respondent had proved her case on a balance of probability against the appellant.
2. That the learned magistrate erred both in law and fact in awarding general damages suffered by the respondent as a result of the appellant's actions.
3. That the learned magistrate erred both in law and fact in analyzing the evidence before herself and hence arriving at a wrong finding.
4. That the learned magistrate erred both in law and fact by not consideration the submissions of the appellant's counsel in arriving at her findings.

The appellant prays that his appeal be allowed and the whole judgment of the lower court be set aside with costs to himself. The appellant submitted that the respondent did not produce allotment letters for the suit plots number 142 and 143 and hence she did not prove ownership of the same. She only produced agreement of sale. She also did not prove she was a member of the Jua Kali Association. No evidence was adduced in respect of any general damages and the same should not have been awarded. He relied on the cases of Nairobi HCC No. 1203 of 1998 Lari Nyakinyua (Solai Farm Ltd) vs Solai Rubei Fram Ltd and Nairobi HCCA No. 149 of 2007 Kenya Hotel Properties Limited vs Willesden Investments Limited.

The respondents submitted that she bought the plots 142 and 143 from Ezekiel Shilisia now deceased and John Makatse Khakabwa. She produced copies of the sale agreements and minutes of the Municipal Council of Kakamega approving her purchase of the said plots. She produced a letter from the council confirming that both Ezekiel Shilisia and PW2 John Makatse Khakabwa were bonafide allottees.

This court has considered the appeal and the submissions herein. I have perused the trial file records and the ruling to be set aside. The trial magistrate held that;

“The plaintiff has provided clear evidence of the agreements she entered into in orders to acquire the 2 plots No. 142 and 143. She has not only called one of the sellers PW2 but the two witnesses PW3 and PW4 to the said agreement.

The plaintiff has produced letters seeking the consent to transfer as well as minutes confirming the transfer – exhibits P3-P4-P5(a) (b) and the plot rent and rates payment made – exhibit 6 (a)(b)(c), P8(a), 8(b) and P9.”

The trial court further goes on to observe that;

“As for the claim of general damages, I believe the plaintiff is entitled to the same. She had put a foundation and build upto the 3rd and 4th levels when the defendant moved in, completed the house and had tenants occupy the same.”

I concur with the judgment by the trial court. I find that respondent bought the plots 142 and 143 from Ezekiel Shilisia now deceased and

John Makatse Khakabwa. She produced copies of the sale agreements and minutes of the Municipal Council of Kakamega approving her purchase of the said plots. She produced a letter from the Council confirming that both Ezekiel Shilisia and PW2 John Makatse Khakabwa were bonafide allottees. I find this is sufficient proof of ownership. On general damages it has come out in evidence that the respondent had put a foundation and had constructed upto the 3rd and 4th levels when the defendant moved in, completed the house and had tenants occupy the same. This was from 2007. I find that the learned Trial Magistrate did not err in law or fact in his judgement.

In *Mwanasokoni v Kenya Bus Service* (1982 - 88) 1 KAR 870, it was held that this court is duty bound to revisit the evidence on record, evaluate it and reach its own decision in the matter. This court however, appreciates that an appellate court will not ordinarily interfere with the findings of fact of the trial court unless they were based on no evidence at all, or on misapprehension of it or the court is shown demonstrably to have acted on wrong principles in reaching the findings. The court finds that the decision was judiciously arrived at and will not interfere with the same. The court finds no basis to interfere with the ruling as it was based on cogent evidence. This appeal is dismissed for lack of merit. The appellant is to meet the costs of the appeal.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 8TH DAY OF MAY 2019.

N.A. MATHEKA

JUDGE