



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 114 OF 2017

RICHARD KADUKI.....PLAINTIFF

VERSUS

ROSE CHEPKEMOI TODOO.....DEFENDANT

JUDGMENT

1. The plaintiff's claim is contained in the amended plaint dated **4/12/2017** which was filed on the on **5/12/2017**. In that amended plaint, the plaintiff seeks the following orders against the defendant:-

(a) A declaration by this court that one (1) acre out of the parcel of land known as WEST POKOT/CHEMWOCHOI/427 belongs to the plaintiff.

(b) An injunctive order restraining the defendant by herself, her client, her employees or agents from continued trespass into the plaintiff's land.

(c) Costs of this suit.

(d) Any other reliefs this court deems fit.

2. The plaintiff testified on **29/7/2019** when this suit came up for formal proof. He reiterated the contents of his plaint and produced documentary evidence in support of his case.

3. The plaintiff's case is that in **1979** he bought **1 acre** of land from the late **Wilfred Todoo** who was the defendant's husband and that the transaction was verified by a way of Statutory Declaration sworn before the District Magistrate's Court at Kapenguria on **20/2/1980**.

4. The plaintiff pleads that a dispute arose in 1991 when the late Wilfred claimed 3 acres of land from two other defendants in **Kitale Civil Suit No. 46 of 1991**.

5. The plaintiff financed the payment of legal fees in that suit in exchange for more land and in default a refund of those legal fees. That suit ended on 1/10/1992 in favour of Wilfred and the two defendants in the suit were compelled to transfer 3 acres to Wilfred which transfer was effected leading to Wilfred becoming the proprietor of **West Pokot/Chemwochoi/427** measuring **3 acres**.

6. It is the plaintiff's case in the plaint and in his oral evidence given at the hearing that he took possession of the **1 acre** of land promptly upon purchase and developed it by building a house and planting trees. Later on the defendant began bothering him. When surveyors came he asked the defendant to give him his 1 acre and she never responded whereupon she was summoned by the assistant chief in vain. His advocates wrote a demand letter to the defendant. His trees were destroyed. The defendant's children prevented him from harvesting his trees. He went to the assistant chief Kapkoris location on 6/11/2016 who summoned the defendant and the defendant refused to comply with the summons whereupon the chief and the elders advised the plaintiff to seek a remedy in court.

7. The plaintiff produced an agreement in respect of the legal fees in **Kitale RMCC No. 46 of 1991** as **P. Exhibit 4**. He produced the decree in that as **P. Exhibit 3** and a copy of statutory declaration dated **20/2/1980** as **P. Exhibit 1**. The receipt No. **414165** dated **20/2/1980** for **Kshs.8/=** paid in respect of the statutory declaration (P. Exhibit 1) was also produced as **P. Exhibit 2**. The original of the Kapkoris location, Tilak Sub Location Assistant Chief's letter dated 16/11/2016 was also produced in evidence.

8. I am satisfied that the plaintiff laid a basis for the production of copies of documents whose originals he could not produce as evidence.

9. The defendant never filed any memorandum of appearance or defence despite being served with summons and plaint and other documents on 7/7/2017 as evidenced by the affidavit of service sworn by one **George Mumali** filed on 25/6/2018.

10. This suit went undefended.

11. I have considered the contents of the plaint and the evidence of the plaintiff in this case. The evidence of the plaintiff was not controverted. In my view the plaintiff has proved his claim on a balance of probabilities. I enter judgment in his favour and against the defendant and I issue the following orders:

(a) A declaration that the plaintiff is entitled to one (1) acre out of the parcel of land known as WEST POKOT/CHEMWOCHOI/427 and he is entitled to be registered as proprietor thereof under the law.

(b) An order that the defendant shall cause parcel WEST POKOT/CHEMWOCHOI/427 to be subdivided and shall excise one (1) acre of that parcel while observing the boundaries of the area occupied by the plaintiff and cause the same to be transferred to the plaintiff as the registered proprietor thereof in default of which the Deputy Registrar of this court shall execute all necessary documents to effect such subdivision and transfer into the plaintiff's name.

(c) An injunctive order restraining the defendant and/or her agents from trespassing into the plaintiff's land.

(d) The defendant shall bear the costs of this suit.

It is so ordered.

Dated, signed and delivered at Kitale on this 31st day of July, 2019.

MWANGI NJOROGE

JUDGE

31/7/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Collins

Mr. Karani for plaintiff

N/A for the defendant

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

31/7/2019