



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KITALE
LAND CASE NO. 152 OF 2007

EMILY TESOT

RUTH MAIYO (Officials of Umoja Wa Wanawake

DORICAS KESSIO Kipkeikei Women Group).....PLAINTIFFS

VERSUS

DAVID KIPTARUS RUTO.....1ST DEFENDANT

JOHN BETT.....2ND DEFENDANT

HARUN KOLLUM.....3RD DEFENDANT

JUDGMENT

Introduction

1. The trajectory of this suit has spanned a period of **12 years**. The plaintiffs filed this suit against the defendants on **23/10/2007**. An amended plaint was subsequently filed on **27/2/2014** which included the 3rd defendant **Harun Kollum**. Another amended plaint was filed on **7/3/2016** in which **Joseph Masai** was substituted with **David Kiptarus Ruto** as the 1st defendant and enjoined in his place.

2. In the 2nd amended plaint, the plaintiffs sought orders which I replicate verbatim as follows:-

(a) **A declaration that the defendant's occupation of the plaintiff's parcel of land LR. No. 6614/2 in Naigam is illegal and void *ab initio* and an order of eviction do issue against the defendants, their agents and or relatives.**

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

(i) **Mesne profits**

(ii) **Damages for trespass to the plaintiffs' building materials and fence.**

(c) **Any other or further relief this honourable court may deem fit to grant.**

The Plaintiffs' Case

3. It is the plaintiffs' case that at all material times they were the owners of **LR. No. 6614/13** formerly a part of **LR. No. 6614/2** in Naigam Estate Farm measuring **0.5 acres** (hereinafter the "suit land") having purchased the suit land from one **Elijah Kenei** now deceased and which sale was ratified by the Cherangani Land Control Board on **6/10/1982** and a letter of consent to transfer issued; that they were in quiet possession of the suit property until **2006** when the defendants without any authority or justification entered onto the suit property with knowledge that it belonged to the plaintiffs; that the defendants invaded the suit property after purporting to buy a part of it from a third party. The 3rd defendant has erected a permanent structure while the 1st and 2nd defendants have built temporary structures thereon. The plaintiffs further allege that on entry on the suit land, the defendants occasioned the plaintiffs' damage in that they wasted their building materials on site being 30 tonnes of sand, 6000 bricks, 28 tonnes of hardcore and damaged a barbed wire fence around the premises.

The Defendants' Defence

4. The defendants filed their joint amended statement of defence on **1/4/2016**. In that defence the defendants deny the plaintiffs' claim and aver that they are the lawful owners of the suit land; that they deny sale of the suit land by Elijah Kenei or that any consent the Land Control Board was issued. They also contend that they are wrongly sued; that they bought their plots each measuring 50 by 100 feet being part of **LR.No. 6614/13** formerly **LR. No. 6614/2** in the year 2002 - 2004 respectively; with the knowledge of the plaintiffs they caused survey and fencing of their plots, took possession and developed the plots with the consent and authority of Roseline Kenei (now deceased), the then administrator of the estate of Elijah Kenei. They also deny wasting the plaintiffs' building materials and that the plaintiffs have suffered any damage as alleged

THE EVIDENCE OF THE PARTIES

The Plaintiffs' Evidence

5. The hearing of this suit started on the **12/10/2016** when **PW1 Emily Tesot** testified and adopted her written statement as evidence. She was recalled to testify further on **13/11/2018**. Her evidence is that she is an official of **Umoja wa Wanawake Kipkeikei Women Group** comprising of **35 women** a registered community based organization and produced its certificate of registration as **P. Exhibit 1**; that the group bought ½ an acre along the road at Kachibora from Elijah Kenei who owned **LR.6614/13**; that they applied for consent of the land board; she produced the application as **P. Exhibit 3** and the consent as **P. Exhibit 4**; that they developed the land by erecting four shops which they rented out; that the defendants have trespassed on the said plot; that the 3rd defendant used to be a tenant on the same plot before the trespass was committed; that however he purported to purchase part of the land; that Roseline Kenei was wife to Elijah Kenei; that the defendants took away the building materials stated on the plaint from the suit land; that the family of Elijah Kenei has never sought to remove the plaintiffs from the suit land and the plot belongs to them and an order of eviction should issue against the defendants. In her opinion, the lost building materials were worth Kshs.160,000/=.

6. Upon cross-examination she testified that Roseline Kenei sold the land to the 3rd defendant and that Roseline Kenei ceased to be a member of the group. She acknowledged that no services of a surveyor were engaged but in the same breath deny that their plot is 50 by 100 feet; that they did not know Roseline Kenei was selling their plot and she never informed them so. In her opinion "Kipkeikei Women Group" is a short form for "Umoja wa Wanawake Kipkeikei Women Group." She faulted the consent in the defendants' as unsigned and false. Her further evidence is that Mrs. Kenei never left the group till her death and that she was the treasurer thereof. She admitted that some members ceased being members at some point and that they were given back their shares in terms of money and making the relevant applications to quit which was considered by the group leaders at a sitting. She further testified that if Mrs. Kenei was to leave the group she will only be given back her shares like any other ordinary member and she had no mandate to sell the group's land. According to PW1 Mrs. Kenei only sought to resign as the treasurer. According to her Elijah Kenei had showed them the boundaries to the suit land but he died before survey was done. They fixed boundary marks using stones but the defendants removed them. When they bought the land, Mr. Kenei's maize was still on it but as soon as it was harvested he left the

land to them. With that the plaintiffs closed their evidence.

The Defendants' Evidence

7. DW1, Haron Kipngetich Kollum the 3rd defendant testified on **22/11/2018**. He adopted his written statement dated **22/4/2014** as evidence-in-chief in this suit. His evidence is that he was a rent-paying tenant at the plaintiffs' premises for four years between 1996 - 2000 and that his landlord went by the name Kipkeikei Women Group; that he has been sued by officials of a group called Umoja Wa Wanawake Kipkeikei Women Group which is different and distinct from Kipkeikei Women Group which had leased the property to him; that however when Kenei family began to sell plots he purchased one and the Kipkeikei Women Group broke up and some women were left in the plot and they call themselves Umoja wa Wanawake Kipkeikei Women Group who are the plaintiffs herein; that while the quarrels within the women group was going on he bought a plot in September, 2000 from Roseline Kenei who was the owner of the land and the treasurer of the women group. He produced an agreement dated 13/9/2000 as **D. Exhibit 1**; that he built on his plot which is near that of the plaintiffs and then left the plaintiffs' premises for his newly purchased plot without any complaint from the plaintiffs until 2014 when this suit was filed. In his view the plaintiffs' complaints only began five years after Roseline Kenei died. He admitted that the land is not formerly subdivided and that it is still under one main title. He admitted that the women group used to meet at his door step when he was a tenant. However he conceded that he saw the group's land being measured but he was not certain as to the size of the land given to the group.

8. DW2, John Kitilit Bett testified on the same date. He doubted whether Umoja wa Wanawake Kipkeikei Women Group and Kipkeikei Women group are one and the same entity and asserted that Mr. Kenei gave the plot to Kipkeikei women group and not the plaintiffs; that Roseline Kenei sold him a plot of 50 by 100 feet for Kshs.390,000/= and her son showed him the plot and he began using it for his purposes but after three years the plaintiffs complained and sued him. When cross examined about his agreement with Mrs. Kenei (**D. Exhibit 2**) he could not explain why Roseline had not signed the agreement. He admitted that Mr. Elijah Kenei was a councillor. Upon re-examination by Mr. Chebii he explained that Mrs. Kenei had a problem with writing so she affixed her thumbprint on the agreement while her son received the purchase price.

9. DW3, David Kiptarus Ruto the 1st defendant testified on **28/1/2019**. He adopted his written statement as evidence in chief in this matter. His evidence is that the 2nd and 3rd defendant are his neighbours; that he never took the plaintiffs' land; that his plot is the size of $\frac{3}{4}$ of a 50 by 100 feet plot which he bought in 2004 from Roseline Kenei; that the plots had been advertised by a signpost and an agreement dated 22/9/2004 (**D. Exhibit 3**) was entered into to signify the sale whereupon he paid Kshs.300,000/=; that the plot was vacant at the time of purchase and that he erected a temporary structure with the knowledge of the 1st plaintiff who never raised any complaint; that his neighbours are Kipkeikei Women Group and not Umoja Wa Wanawake Kipkeikei Women Group. In his opinion the plaintiffs' plot abutted the road and extended into the interior of the land it was carved as did his plot. When cross-examined he averred that he and all the other buyers have never been taken to the Land Control Board for consent. He denied that Roseline's signature on the agreement is forged.

10. DW4, David Kipkorir Tarus testified on the same date as other witnesses and adopted his written statement as evidence. His evidence is that the land belonged to his late father Mr. Kenei; that Kipkeikei women group bought the land comprising of 0.5 acres; that his father gave them the land as a gift while campaigning for a councilor's seat but never took them to the land board; that formal subdivision of the land comprised in the main title has not been conducted and that the main title, that LR.6614/13 is still intact and is registered under his late father's name; that no purchaser has ever been taken to land control board. He disowned P. Exhibit 3 and P. Exhibit 4 as not genuine; that his mother agreed with Kipkeikei Women Group and later sold the suit land to the three defendants; in his view it is his family that should have been sued and not the defendants. He averred that there are no administrators to the estate of the late Kenei at the moment.

11. Upon cross examination by Mr. Samba, DW4 reiterated that upon his father becoming a councillor in Trans-Nzoia he gifted the women who were his supporters with the said land; that his mother has a share

in the plot; that the women group had stayed on the plot for about 20 years by the time he gave them the land.

12. DW5, Stanley Tarus, testified on **27/2/2019** and adopted his written statement as evidence. His evidence is that he does not know any organization known as Umoja Wa Wanawake Kipkeikei Women Group; that his father gave the land as a gift to Kipkeikei Woman Group; that this father passed on in **1990**; that his mother was a member of the Kipkeikei Women Group; that he main title to the land from which the plaintiffs' parcel was carved **LR.6614/13** is still intact that it has never been formally subdivided; that the land is **485 acres**; that the survey is yet to be finalized; that though the surveyor has visited the land the subdivision process has not yet been approved by the physical planning authorities; that his mother sold the land to the three defendants and moved out of Kipkeikei Women Group together with other members and she took the land as her share and sold it to the defendants; that part of the land that had been developed remained in the hands of the other women who remained the Group; that he is not aware of any agreement for sale between the plaintiffs and his father or any visit to the Land Control Board for consent. While still under examination-in-chief he stated that he was not aware whether his mother and those who pulled out of the group agreed on the sale of the land and added that the others did not object to the sale.

13. The plaintiffs' written submissions were filed on **30/4/2019** while the defendants filed theirs on **30/4/2019**.

DETERMINATION

Issues for Determination

14. The issues for determination in this suit are as follows:

(a) Whether Umoja wa Wanawake Kipkeikei Women Group and Kipkeikei Women Group refer to the same entity.

(b) If so whether they are entitled to 0.5 acres of land in LR. 6614/13.

(c) Whether the land sold by Roseline Kenei to the defendants is the same land allocated to the women's group by Elijah Kenei.

(d) Whether Roseline Kenei had mandate to sell the group's land.

(e) What orders should issue?

(a) Whether Umoja wa Wanawake Kipkeikei Women Group and Kipkeikei Women Group refer to the same entity.

15. In my view the only evidence alleging wrangles within the women group is external that it comes from non-members who express their mere suspicion regarding what may have occurred within the group without any concrete evidence to support those suspicions. I have considered the evidence of DW4 who stated as follows:

"The land of the group was 0.5 acres. It belonged to the original Kipkeikei women group. My father gave them the land while campaigning for a councilor's seat".

16. DW4 stated as follows in his cross-examination by Mr. Samba:

"The ones who pulled out are not in court today. They never formed any other group after leaving the group."

17. It is clear that none of the witnesses who alleged a break up of Kipkeikei Women Group adduced any

evidence to support their allegation. However in the opinion of DW4 and DW5 the group never broke up; only some members ceased their membership in the group which remained in possession of the land they had acquired from Elijah Kenei. I am therefore convinced that Kipkeikei Women Group only changed its name and the names Umoja Wa Wanawake Kipkeikei Women group and Kipkeikei Women Group refer to one and the same entity.

(b) Whether the Women group is entitled to 0.5 acres of land in LR. 6614/13.

18. Without producing any sale agreement the plaintiffs' allege Elijah Kenei sold 0.5 acres of land to them. They are in possession on some of the land and the rest is occupied by the defendants. The defendants appear to know of a transaction vide which the land was placed under the ownership of the plaintiffs. DW3 said that the land belonged to Roseline and Kipkeikei women group were his immediate neighbours on the group and their land was developed. This rhymes well with the evidence of the plaintiffs. DW3's evidence is that the plaintiffs' plot extended away from the road into the main land. This contrasts with the evidence of the plaintiff that the plot was originally meant for a petrol station. In my view there is likelihood that a plot meant for use as a petrol station should have its length aligned more with the length of the road rather than be narrow and stretch into the interior. DW4's evidence is that the Women Group stayed on the suit land for 20 years prior to being given the land expressly by Elijah Kenei. DW5 admitted that his father sold 0.5 acres of land to the plaintiffs in the 1980s. I am therefore convinced that the plaintiff is entitled to 0.5 acres of land out of LR. 6614/13.

(c) Whether the land sold by Roseline Kenei to the defendants is the same land allocated to the women's group by Elijah Kenei

19. In inquiring into this issue I need not go further than the evidence of DW5 who stated as follows:

“The group was shown the land. They put up a building. They took possession. My mother sold. She is the only one who entered into an agreement with the defendants. I don't have any agreement between the members to the effect that she was given the part she sold as her share.”

20. He later testified as follow:

“My mother is the one who sold the group's parcel after she left the group. She sold to the three defendants. She moved out with some other members. I think the members were reimbursed. I think she took the land being her share and sold it. Part of the land that had been developed remained in the hands of the other women who remained in the group.”

21. DW1 testified that he constructed his structure a short distance away from the plaintiffs' structure and left the plaintiffs' building, where he had been leasing premises, and went to occupy his own. He however maintained that the plaintiffs' plot extended not along the length of the road but into the mainland of LR 6614/13.

22. It is therefore clear from the evidence of DW4 and DW5 that the land sold by Roseline to the defendants is part of the same land that Elijah Kenei gave to the plaintiff.

(d) Whether Roseline Kenei had mandate to sell the group's land

23. It was the evidence of DW5 that Roseline Kenei and others ceased being members of the Kipkeikei Women group. In his opinion he thinks that they were reimbursed. He is also of the opinion that Mrs. Kenei took part of the land given to the group by Mr. Kenei as her share in the group while leaving and sold it to the defendants leaving part of the land that had been developed in the hands of the women who remained in the group. However very pertinent questions were asked of the defendants' and their witnesses in cross-examination as to whether there was evidence of dissolution of the group and whether there was evidence that Mrs. Kenei resigned from the group. DW5 stated as follows:

“I don’t know when they pulled out. I cannot tell which members pulled out. I did not state that my mother was a member. I don’t have anything like a resignation letter of Mrs. Kenei.”

24. Later on in his cross examination he stated as follows:

“My mother sold. She is the only one who entered into an agreement with the three defendants. I don’t have any agreement between the members to the effect that she was given the part she sold as her share...I am not aware of any meeting between her and the remaining members resolving that she sells the land. The action were by my mother. We abide by my mother’s decision.”

25. I am therefore of the opinion that from the contents of the statements of the witnesses in this case, there is evidence that Mrs. Kenei had no authority to revoke the gift given by Mr. Kenei to the Kipkeikei Women group or to sell it to the defendants.

(e) What orders should issue?

26. I have found that **Kipkeikei Women Group** and **Umoja Wa Wanawake Kipkeikei Women group** refer to one and the same entity and that is the plaintiff and that the plaintiff is entitled to 0.5 acres of land from LR.6614/13. I have also found that the land given to the group was sold by Mrs. Kenei to the defendants and that she did not have authority to dispose of the land.

27. In my view the defendants have wrongfully encroached on land that was clearly demarcated and given as a gift to the plaintiffs. They have no right to remain thereon.

28. In the final analysis I find that the plaintiffs have proved their claim on a balance of probabilities and I hereby enter judgment in their favour and issue the following orders:-

(a) A declaration that the plaintiff is entitled to 0.5 acres of land from LR. No. 6614/13 and in accordance with the boundaries of the land as given to them by Elijah Kenei.

(b) A declaration that Roseline Kenei had no mandate to sell the plaintiffs land to the defendants.

(c) A declaration that the purported subdivision of the plaintiffs’ land into subplots that were sold to the defendants is illegal null and void.

(d) A declaration that the defendants’ occupation of the parcel of land given to the plaintiffs by Elijah Kenei is illegal.

(e) An order that the defendants shall forthwith remove themselves from the land granted to the plaintiffs by Elijah Kenei and in default they be evicted.

(f) An order that the defendants shall jointly and severally bear the costs of this suit.

Dated, signed and delivered at Kitale on this 18th day of July, 2019.

MWANGI NJOROGI

JUDGE

18/7/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Mufutu holding brief for Samba for Plaintiff

Ms. Bett holding brief for Chebii for Defendants

COURT

Judgment read in open court.

MWANGI NJOROGI

JUDGE

18/7/2019