



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ENVIRONMENT AND LAND CASE NO. 10 OF 2017

DUNCAN NGARI KANANDA.....PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF KIRINYAGA.....DEFENDANT

JUDGMENT

BACKGROUND

The Plaintiff filed this suit against the defendant for compensation for plot number 227 A Kutus at the current market value. In the alternative the Plaintiff is seeking an order that the defendant do point out to him the location of plot number 227 A Kutus. The Plaintiff also seeks the costs of suit plus interests. The defendant did not file defence. However, the case was fixed for hearing and the plaintiff was cross examined by counsel for the defendant. This suit was instituted by EDITH WANJIKU KANANDA who upon her demise was substituted by her son DUNCAN NGARI KANANDA who testified and stated that his late mother EDITH WANJIKU KANANDA was allocated plot number 227 A Kutus in the year 1976 by the then Municipal Council of Kerugoya Kutus. The deceased took possession and occupied the plot immediately after allocation.

In the year 2005 the deceased learnt that plot number 227 A Kutus had a deed plan number KABARE/NYANGATI/863 which had been issued to one PETERSON NDAMBIRI KARAGU. The Plaintiff told the court that there was a suit in court between the deceased Plaintiff and the said PETERSON NDAMBIRI KARAGU which was conducted and court held that the said land parcel No. KABARE/NYANGATI/863 belonged to the said PETERSON NDAMBIRI KARAGU.

The Plaintiff also stated that they have been paying rates to the County Government of Kirinyaga for plot No.227 A Kutus. He produced the following documents in evidence;

1. Letter of allocation dated 29th June 1988 (exhibit 1).
2. Letter dated 5th July, 2000 (Exhibit No.2).
3. Letter dated 5th August, 2000 (Exhibit No.3).
4. Receipt for payment of rates dated 20th August, 2009 and 1st July 2009 (Exhibit 4).
5. Judgment delivered in Kerugoya High Court Judicial Review number 15 of 2013 (Exhibit No.5).

ANALYSIS AND DETERMINATION

I have considered the evidence adduced by the Plaintiff and the submissions by the Counsels for both the Plaintiff and the Defendant. The issue for determination in this case is whether the plaintiff has discharged his burden of proof on the required standard. Even when the plaintiff alone testifies, the burden of proof always remains on the shoulders of the Plaintiff and never shifts to the defendant. The learned author of the leading text book; the *HALSBURY'S LAWS OF ENGLAND, 4TH EDITION, VOL.17 at Para.13 and 14* describes burden of proof as follows;

“The legal burden is the burden of proof which remains constant throughout a trial. It is the burden of establishing the facts and contentions which will support a party’s case. If at the conclusion of the trial he has failed to establish these to the appropriate standard he will lose”.

It is trite law that a claimant must satisfy the court or tribunal that the conditions which entitled him to an award have been satisfied. Where

allegations have been made, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case. The plaintiff in his evidence produced five (5) documents in support of his claims. The first is a letter from the office of the Town Council Kerugoya/Kutus to the plaintiff dated 29th June, 1988. The latter purports to acknowledge receipt of an application for a plot by the plaintiff at Kutus which was approved by the Town Council, Town Planning works and Housing Committee meeting vide minute No.7PW& H 310/75. In another letter dated 5.7.2000, the Municipal Council of Kerugoya/Kutus wrote to the plaintiff confirming that she had been allocated a temporary occupation letter to Plot No.227 A vide minute No.3/96. In yet another Letter dated 5.8.2002 the County council of Kerugoya/Kutus wrote to the plaintiff confirming that she had been authorized to fence her plot mentioned above. P. Exhibit No.4 are copies of payment receipts issued to the plaintiff by the Municipal Council of Kerugoya/Kutus in respect of Plot No.227 A Kutus for land rent and rates. The 6th and final documents were proceedings in Judicial Review case No.15 of 2013 (Kerugoya). From my evaluation of these documents, it becomes clear that the plaintiff was granted a temporary occupation letter (TOL) of the plot described as 227 A. The minutes of the committee meeting which approved her occupation were not even produced in evidence. The plaintiff did not also produce the approved part development plan (PDP) for the plot which she purports to have been allocated. The plaintiff had even taken one PETERSON NDAMBIRI KIRAGU to court in JR No.15 of 2013 over the same subject matter which case was dismissed with costs.

The plaintiff has not demonstrated that she was lawfully and procedurally allocated the suit plot No. 227A Kutus. The same plot had been alienated and a certificate of title issued and registered in the name of the said PETERSON NDAMBIRI KIRAGU as parcel No. KABARE/NYANGATI/862. If the plaintiff was diligent he could have discovered that the same land was not available for alienation. It cannot also be discerned from the evidence adduced which officer from the defunct Municipal Council of Kirinyaga signed the allotment letter. In my view, the plaintiff has not discharged her evidentiary burden of proof in this case to warrant the grant of the orders sought.

In the result this suit must fail and the same is hereby dismissed. I make no order as to costs.

READ and SIGNED in open Court at Kerugoya this 12th July, 2019.

E.C CHERONO

ELC JUDGE

12TH JULY, 2019

In the presence of:

- 1. Ms Nyangati holding brief for Maina Kagio for Defendant*
- 2. Ms Kiragu holding brief for Makworo for Plaintiff*
- 3. Mr. Okatch – Court clerk*