



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

LAND CASE NO. 21 OF 2015

PENINA NKIROTE.....PLAINTIFF

VERSUS

JAMES M'ITONGA MIRINGA.....DEFENDANT

JUDGMENT

1. The plaintiff filed the Originating Summons dated **30th March, 2015** on **1st April, 2015** seeking the following orders, namely that:

(a) She be declared to have become the legal owner entitled by adverse possession of all that parcel of land comprised in Title Number LR NO. NKUENE/ NKUMARI/1604 situate in NKUENE.

(b) She be registered as the proprietor of the said parcel of land namely NKUENE/NKUMARI/ 1604 situate in Nkuene in place of the above named Respondent whose favour the land is currently registered..

(c) The last original indentures in respect of land parcel No. NKUENE/NKUMARI/1604 which are with the respondent be dispensed with;

(d) The defendant be ordered to sign the transfer form and execute all relevant documents to facilitate the transfer into the name of the plaintiff failure of which the executive officer of the court to be empowered to sign and execute such documents to facilitate the transfer thereof.

(e) Cost be provided for.

2. The summons is supported by the affidavit of the plaintiff dated **30/3/2015**.

3. The defendant opposed the summons vide a replying affidavit to the originating summons sworn on **4/8/2015**.

4. The hearing of the suit proceeded on the **13 /12/2018** and **17/12/2018**.

The Plaintiff's Case

PW1, the plaintiff, testified and adopted her sworn affidavit as her evidence in chief. Her evidence is that she is the wife and by extension the administrator of the estate of the late **Ngaku Mariene**; that the said Ngaku Mariene entered into a sale agreement for land with the defendant on **24/10/2000**, where as per the terms of the said agreement, he took possession of the said suit land but unfortunately the deceased passed on before the suit land was transferred to his name though he stayed in the said land with his family; that their occupation has been uninterrupted and they have never received any written letters of objection from the defendant; that upon her husband's demise, she requested the defendant to transfer the suit land to her name but the defendant insisted that there was a loan owed to Agricultural Finance Corporation Ltd (AFC) which she had to clear for the said land to be transferred to her name; that she dutifully paid the monies owed to AFC but the defendant adamantly refused to transfer the said suit land even after she cleared the loan the defendant owed to AFC.

6. **PW1** produced the sale agreement, Grant of Letters of Administration to her late husband's estate, letter from AFC dated **2/5/2014**, payment receipts and a demand letter issued to the defendant.

7. **PW2, PW3** and **PW4** also testified in furtherance of the plaintiff's case which evidence corroborated that of **PW1**.

The Defendant's Defence

8. The defendant testified on **17/12/2018** and adopted his witness statement dated **29/5/2018** as his evidence in chief. In a nutshell, the defendant admitted that he indeed entered into a sale agreement with the late Ngaku Mariene, and as per the terms of the said agreement, the late Ngaku was to repay the loan to AFC on behalf of the defendant before he could sell the land to him; that the late Ngaku never finished repaying the loan and he therefore never sold him any land. He averred that he never allowed the late Ngaku to enter the suit land and that he made it clear that he was willing to refund the monies paid in respect of the loan. During cross examination, he averred that the plaintiff began farming on the land in **2009** and that the defendant never wrote her any notice to vacate. With that evidence the defence closed its case.

The Analysis of Evidence and Issues for Determination

9. I have examined the documents presented in evidence by the plaintiff as well as her pleadings.

10. It is evident from the terms and conditions of the sale agreement **PEXB 1** made on **24/10/2000** that the defendant sold one acre of land from **NKUENE/NKUMARI/1604** at a consideration of **Kshs. 130,000** of which **Kshs. 125, 000** was paid on the signing and execution of that agreement as evidenced by part payment receipt.

11. From the said agreement dated **24th October 2000**, it is clear from **Clause 1** thereof that contrary to his oral evidence at the hearing, the vendor was tasked with duty of paying the said loan owing to AFC, for which action the agreement specified a timeline - that it was to be paid by **24th October 2000**.

12. As to the taking up of possession it is evident that as per the terms of the agreement, the plaintiff was to take possession immediately upon execution of the said agreement. This court is therefore persuaded that the plaintiff's family did take up possession as provided for in the agreement and that she and her children have been and are still in possession of 1 acre from Title Number **LR NO. NKUENE/NKUMARI/1604** since **2000** as there is no evidence presented by the defendant to the contrary. That is a period in excess of **12** years.

13. In this court's view the defendant's admission of the agreement between him and the plaintiff's husband robs him of the defence that he paid the AFC loan by himself; it is evident that he only applied the monies paid to him as consideration by the plaintiff's husband. This court is also convinced that the plaintiff knows the size of the land subject matter of the agreement which is the same size of the land that she occupies and is claiming from the defendant. It is only one acre, and it is comprised within the title owned by the defendant.

14. I therefore grant the plaintiff judgment in her favour and I issue the following orders:

(a) A declaration that the plaintiff has had open, continuous peaceful and uninterrupted possession of one (1) acre of that land comprising LR No NKUENE/NKUMARI/1604 for over twelve (12) years.

(b) The plaintiff shall be registered as the proprietor of the one (1) acre which the plaintiff occupies and which is comprised in Land Title No NKUENE/NKUMARI/ 1604 situate in Nkuene.

(c) The defendant shall cause the excision and transfer to the plaintiff as proprietor of the 1 acre within LR No NKUENE/NKUMARI/1604 which the plaintiff occupies in default of which the Deputy Registrar of this court shall execute all necessary documents to effect such subdivision and transfer.

(d) That each party shall bear their own costs of this suit.

It is so ordered.

Dated and signed at Kitale this day of 2019.

MWANGI NJOROGE

JUDGE

ENVIRONMENT AND LAND COURT, KITALE

Delivered in open court at Meru on this 31st day of October 2019

HON. LUCY. N. MBUGUA

ELC JUDGE

JUDGE

ENVIRONMENT AND LAND COURT, MERU