



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 53 OF 2019

WILLIAM MUNANDA NDIEMA.....PLAINTIFF

VERSUS

DUSTIN NEMEN MUKUNG.....DEFENDANT

JUDGMENT

1. The plaintiff's claim is contained in the plaint dated 23/7/2019 which was filed on 24/7/2019. In that plaint, the plaintiff prays for the following orders against the defendant:

- (a) An order declaring that the plaintiff is the legal and absolute owner of the entire 8.3 acres part of parcel No. Trans-Nzoia/Saboti/Lagamet/6679/4 and that the defendant and all those claiming under her do move out of the 3 acres of the suit land and demolish her structures failing which they be evicted at her own costs.
- (b) An order of permanent injunction restraining the defendant and all those claiming under her from trespassing and interfering with enjoyment of the suit land.
- (d) Costs.
- (e) Interests.
- (f) Any other relief the court may deem just and fit to grant.

2. According to the plaint the plaintiff's case is that in the year 2016 he purchased the suit land measuring 8.3 acres from Michael Moss Mukung who is the defendant's brother-in-law and paid full consideration therefor and immediately took possession thereof; that the suit land was part of land parcel No. Trans-Nzoia/Saboti/Lagamet/6679/4; that the defendant was by then in occupation of about 3 acres out of the 8.3 acre parcel the plaintiff purchased; that the defendant was informed of the sale and at her request allowed six months to give vacant possession but she has failed to give such vacant possession and has stayed on the suit land to date without any justification and is now a trespasser who should be evicted therefrom and enjoined from any further interference with the plaintiff's user and quiet enjoyment of the suit land.

3. The defendant never filed any memorandum of appearance or defence despite being served with summons and plaint and other documents on 8/8/2019 as evidenced by the affidavit of service sworn by one Godfrey Masinde Sitati sworn on 27/8/2019.

4. The hearing proceeded *ex-parte*. The plaintiff alone testified on 26/11/2019 when this suit came up for formal proof. He reiterated the matters in the plaint. He produced an agreement for sale dated 3/6/2016 vide which he bought the suit land. The same indicates that the vendor bought 7 acres at a cost of Kshs.3,250,000/= and that the property was sold free of all encumbrances.

5. However no certificate of title or certificate of official search was produced in the matter to show that the seller was the legal owner of the suit land that he was selling to the plaintiff. The agreement produced does not also narrate any of the matters testified of regarding the occupation by the defendant of the suit land. No agreements have been presented before court to show there was consensus on the issue of giving vacant possession of the suit land by the defendant. There is a discrepancy between the acreage mentioned in the plaint and the acreage in the agreement in that the plaint states that the land purchased was 8.3 acres and the agreement states that it was 7 acres. The plaintiff explained this in his evidence by saying that later after the first agreement the land was found to be 8.3 acres and he bought the extra 1.3 acres at Kshs.530,000/=. He produced a hand written agreement dated 29/7/2016 between him and the seller.

6. In my view and upon the foregoing analysis the plaintiff has not established his claim on a balance of probabilities; evidence of ownership of the land or its registration in the name of the seller is crucial in a suit such as this. Without that this court would not be able to tell whether the land is registered or not or even whether it exists.

7. For the above reasons the plaintiff fell short of establishing his claim on a balance of probabilities and this suit is hereby struck out with no orders as to costs.

Dated, signed and delivered at Kitale on this 3rd day of December, 2019.

MWANGI NJOROGI

JUDGE

3/12/2019

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Chebii for Plaintiff

N/A for Defendant

COURT

Judgment delivered in open court.

MWANGI NJOROGI

JUDGE

3/12/2019.