



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

ELC CASE NO. 116 OF 2015.

FRANCIS NABUI.....PLAINTIFF

VERSUS.

JUSTUS WANJALA.....1ST DEFENDANT

PETER W. NABUI.....2ND DEFENDANT

MAURICE KONDOA.....3RD DEFENDANT

JUDGMENT.

[1] The plaintiff filed this suit on 5/11/2015 he claimed that his late father Nabui Masai distributed his land West Sangalo/East Bukusu/473 amongst his eight sons in 1984 and that each son was given his rightful share in 1984 and that they settled on the land without any complaint. He alleges that in 1984 the defendants who are his brothers, secretly and without informing other beneficiaries carried out succession on the said piece of land allocated themselves more land than was given by their father as a gift. He alleged that he was apprehensive that the defendants want to evict him over his land that he got from his father as a gift. He claims that defendants have no right to evict him and that he is entitled to quiet enjoyment and utilization of his land. He also prays for the revocation of the subdivision of land parcel West Sang'alo/East Bukusu/473 and costs of the suit.

[2] The defendants filed their defence and denied the plaintiffs claim. They admitted that Nabui Masai who was their father distributed his land among his sons in 1988 and not 1984.

[3] In his evidence the plaintiff said that land parcel West Sang'alo/East Bukusu/473 belonged to his father. That he borrowed Kshs.100,000/= he borrowed money with it and failed to pay. He said that he told his brothers to take seven acres of cane he had planted therein, and sell and pay the debt. He did not know how much was paid for the cane. He said that he later learnt that his father and brothers had subdivided the land and distributed it out. He alleged that he was given five acres on the ground. He alleged that he actually did not get the five acres. He claimed that he wanted the five acres. He also wanted to get an account of the sale of the cane, his car and the land. He however said that he does not want any costs of the suit.

[4] Maurice Juma Kondoia the 3rd defendant gave evidence and said that the plaintiff was his brother together with the 1st and 2nd defendants. That land parcel East Bukusu/West Sang'alo/473 belonged to his father Nabui Masai. That in 1986 they saw an advertisement of their father's land. It was being sold by Public Auction. They found out that the Plaintiff had stolen their fathers title, changed his identity card to read his fathers name and borrowed Kshs.100,000/= and failed to pay. That they called the defendant home and wrote a letter on 20/1/90 where he admitted that he stole his fathers title to borrow a

loan. He agreed that the portion to be given out of the subdivision of his fathers land 473, his vehicle KSD 085 a Peugeot, Seven acres of Sugarcane and household items (furniture) radio iron sheets etc be sold to repay the bank loan of Kshs.105,000/=.

[5] The plaintiff also wrote to the DC on 30/8/1989 and apologized for doing so. Also produced in court was the parties fathers letter to the DC dated 29/8/1989 seeking assistance on the stealing of title E. Bukusu/W. Sang'alo/473 Bungoma ELC 126 of 2010 where the plaintiff withdrew a case against Justus Wanjala Nabui claiming that his brothers had agreed to give him 2 acres in Namisi Area. Equally produced was Bungoma ELC 61/2013 where the plaintiff herein had sued Justus Wanjala Nabui claiming East Bukusu/West Sang'alo/1930 a subdivision of the suit land herein. His claim was dismissed by this court. The witness testified how the plaintiff then moved to parcel numbers East Bukusu/West Sang'alo 1926 and 1930 subdivisions of the original 473 and which lands belong to their younger mother in trust for minors. That their younger mother filed a case in the lands disputes tribunal to ask him to move out and vacate the land. Equally produced were Criminal proceedings against the plaintiff for stealing his fathers title deed and the letter by his father withdrawing the complaint and asking for settlement of the issue at home.

[6] The 2nd and 3rd defendant associated themselves with the evidence of the 1st defendant and adopted it fully. The issue for determination is whether the plaintiff has made any case against the defendants.

[7] From the evidence adduced by the defendants and not controverted by the plaintiff, land parcel East Bukusu/West Sang'alo/473 belonging to the father of the parties does not exist. It was closed on subdivision. The resultant parcels were given to the 8 sons of Nabui Masai. This included the plaintiff herein. The plaintiff had stolen the title of his father and faked his identity card. Consequently, he was charged in a Criminal charge for doing so. He owned up, allowed his share from his fathers land to be sold, his Peugeot car and household goods to be sold to pay for Kshs.105,000/= he had borrowed from Kenya Commercial Bank using his fathers title deed.

[8] The plaintiff has filed various cases looking for the same entitlement. Bungoma ELC No. 126 of 2010 which he withdrew. He also filed Bungoma ELC Case No. 61 of 2013 claiming the same entitlement Albeit from a different brother. That suit was dismissed with costs on 10/3/2017.

[9] The plaintiffs case is clearly without merit. He is always on a fishing expedition. This is the third case I have had to dismiss arising on what he calls his entitlement from his father in East Bukusu/West Sang'alo/473. This land was never a subject matter of any Succession Cause as alleged. It was subdivided and transferred during the then registered owners life time. The allegations of the plaintiff on that score are without any merit.

The plaintiffs prayers cannot be allowed. They have no merits. This suit fails I dare say, that the plaintiff is becoming a vexatious litigant in regard to his alleged beneficial claim arising of the subdivision of his fathers land East Bukusu/West Sang'alo/473.

Suit is dismissed with costs and Interests to the defendants.

It is so ordered.

Judgment read in open Court in the presence of the parties.

Dated at Bungoma this 21st day of February, 2018.

S. MUKUNYA

JUDGE.

In the presence of:

Joy: Court Assistant

Plaintiff: Present In person

Defendants: Present