



REPUBLIC OF KENYA.

IN THE ENVIRONMENT & LAND COURT AT BUNGOMA.

ELC CASE NO. 116 OF 2017

(Formerly ELD CIVIL SUIT NO. 290 OF 2017).

HON. ATTORNEY GENERAL.....PLAINTIFF

VERSUS.

ASHON SIKOLIA WANYONYI.....1ST DEFENDANT

LUKA MAKOKHA WANYONYI.....2ND DEFENDANT

RULING.

[1] This suit was filed by the Attorney General on 18/8/2017. He claims that he is the registered owner of land parcel Webuye Municipality/141 having been so registered on 1/4/1998 of the said land comprising of 0.5349 ha. The facts giving rise to the suit are that on 30/6/2017 the defendants herein are alleged to have unlawfully demolished structures belonging to the plaintiff on the said parcel causing the plaintiff loss and damage. The plaintiff then prayed for an order of declaration that the suit land Webuye Municipality/141 belongs to the plaintiff to the exclusion of the defendants. They also prayed for an order for compensation by the defendants for their destroyed properties and they equally sought for an order of eviction of the defendants, their agents and servants from the suit land and finally they sought for an order of permanent injunction restraining the defendants their agents servants or heirs from trespassing the suit land.

[2] The defendants appointed the firm of J.W. Sichangi & Co. who filed a notice of appointment and a notice of preliminary objection. They stated that the suit herein is bad in law and offends the provisions of Sec. 7 of the Civil Procedure Act Cap 21 in that the matter is resjudicatta upon the hearing of;

(i) Bungoma HCCC 100 of 1998

(ii) Bungoma CMCC No. 110 of 2011

(iii) Bungoma ELC Case 59 of 2014

The advocates for the parties appeared before me and argued the preliminary objection on 14/11/2017. They relied on the filed documents and the cases above quoted. Some of these cases were heard before me and others were heard before other Judicial officers.

[3] From the records produced in Court filed by the County Council of Bungoma on 23/7/2009, the History of Parcel Ndivisi/Muchi/1401 is traced. This parcel was adjudicated vide notice No. 35 of 1968 on 22/3/1969 to Bungoma County Council for maize and produce Board Broderick falls. Broderick falls

was the old name of Webuye. The land had been acquired from the original owner Reuben Wanyonyi the father of the defendants. The defendants later after their fathers death complained that the plot was not properly acquired, they produced all the documents in their possession and on 7th September, 2006 the County Council of Bungoma confirmed that Ndivisi/Muchi/1401 was erroneously registered in its name. the defendants herein had filed Principal Magistrate Civil Suit No. 452 of 2006 against the County Council of Bungoma and on 23/11/2006 an order was issued by the Court to have the said land Ndivisi/Muchi/1401 registered in the name of the respondents.

[4] This land Ndivisi/Muchi/1401 comprised of 5.8 acres and 3.2 acres had been acquired by Maize and produce Board. However, the whole land had been registered in the name of Bungoma County Council. Through a protracted Litigation, Bungoma County Council relinquished the 5.8 acres in respect of 401 to the plaintiffs herein. The plaintiffs land 1401 was subdivided into Ndivisi/Muchi/6920 and 6921. Parcel 6921 was transferred to one James Ndirangu Nganga while the respondent retained 6920. This piece of land was claimed by Alfred Wafula Khaemba, Wilberforce Mutenge as members of Webuye Jua Kali and Kanubha Menukha Vaghela as defendants in ELC 59/2014. The first two claimed that they were allotted the plot by Webuye Municipal Council in 1998 through the Ministry of Research Science and Applied Technology. They claimed that the land was compulsorily acquired by the Government and that the respondent was paid fully. The court had made an order that land belongs to the defendants after tracing the history of the case in Civil Appeal No.110 of 2011 in James Ndirangu Nganga -Versus- Kanubha Vaghela. The defendants in ELC 59 OF 2014, Alfred Wafula Khaemba, Wilberforce Mutenge as members of Webuye Jua Kali Association were ordered to vacate land parcel Ndivisi/Muchi/6920 within 45 days. They did not and this court ordered an eviction on 29/11/2016. The defendants in this case following the court order evicted the defendants in ELC 59 OF 2014. This is the eviction referred to here by the plaintiff. The County Council of Bungoma continued to issue allotment Letters over land parcel Ndivisi/Muchi/6920 which they had surrendered to the defendants herein, as a result, Webuye Jua Kali Association applied and were allocated parcel Webuye Municipality/141 on 1/4/98 when the Land had been returned to its owners, the sons of Reuben Wanyonyi the defendants herein through an order of the court. That is how come, the so called land parcel Webuye/Municipality/141 is on the ground inside Ndivisi/Muchi/6920.

The issues herein has been canvassed between the parties in the suits above quoted. Land parcel Webuye/Municipality/141 does not exist on the ground, it was given through a mistake. The preliminary objection is sustained.

This suit is resjudicata. This suit is dismissed with costs to the defendants.

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

Dated at Bungoma this 28th day of March, 2018.

S. MUKUNYA

JUDGE.

In the presence of:

Joy: Court Assistant

Mr. Sichangi: For the defendant

Madam Isiye: For Ogumbi for the Plaintiff/Respondent