



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 174 OF 2017

LUCAS OGOLA OWOUR.....PLAINTIFF

VERSUS

BEATRICE MANENO.....1ST DEFENDANT

ANDREW ODOUR ODHIAMBO.....2ND DEFENDANT

JUDGMENT

Introduction

1. In the plaint dated 31/10/2017 the plaintiff seeks the following prayers:-

- a. A declaration that the plaintiff is the sole and legal owner of plot measuring 50 x 100 feet Title Kiminini/Kinyoro/Matisi Block 3/528.**
- b. A permanent injunction restraining the defendants, their agents, servants, employees and/or any persons claiming title through them from entering, constructing, wasting, alienating, damaging, fencing and/or any other ways/manner interfering with the said suit plot measuring 50 x 100 feet Title Kiminini/Kinyoro/Matisi Block 3/528.**
- c. An eviction order against the 1st defendant out of plot measuring 50 x 100 feet Title Kiminini/Kinyoro/Matisi Block 3/528.**
- d. Costs of the suit.**

Plaintiff's Case

2. The plaintiff's case as contained in his plaint is that he purchased a piece of land measuring 50 feet by 100 feet from the 2nd defendant on 22/10/2013; He states that he was given vacant possession of the plot, but the 1st defendant subsequently trespassed onto the plot and has dispossessed the plaintiff of the same. It is on that basis that the prayers set out above are sought.

3. No defence was filed by the defendants in this matter and the suit proceeded to formal proof on the date it was first set down for hearing, that is 28/2/2018.

4. During the hearing the plaintiff reiterated the contents of the plaint and produced documents, including the agreement of sale dated 22/10/2013 between him and the 2nd defendant. The agreement reflects the sale of the suit land to the plaintiff for Kshs.200,000/=. Another agreement, "P. Exhibit 3", states that on 2nd December, 2014 the 2nd defendant agreed to sell the same plot to the plaintiff for Kshs.450,000/= out of which a deposit of Kshs.10,000/= was paid.

5. Already, having looking at these two documents, doubts have begun to creep in as to which was the real transaction between the plaintiff and the 2nd defendant and when it was conducted. The plaintiff alone testified at the hearing and he never explained his documents at all. He just presented the documents to the court as they were.

6. It is necessary first that when a litigant comes before court, the pleadings must be properly drawn to contain all the relevant facts of the case upon which he wishes to rely at the hearing. Besides that, even where the suit is not opposed, the litigant especially a plaintiff in a suit commenced by way of plaint or in a counterclaim, must lead evidence on each and every fact he has laid out in the plaint which forms a crucial part of his case. Nothing should be left to conjecture on the part of the court in any suit where the litigant is capable of establishing the facts. I must state that as ours is an adversarial system, the court is not to be called upon to presume any state of affairs or facts regarding any litigant's case unless it must. In the present case, I find it not necessary to make any assumptions. I must go along with the contents of

the plaint even in the absence of the defence, and find out if evidence of the plaintiff supports the statement that he purchased the land on 22/10/2013. This court has found conflicting dates in the documentation by the plaintiff.

7. In my view the plaintiff's case is so hopelessly drafted in the plaint that it cannot stand scrutiny. I must not comment any more on this suit. However I must have regard to the fact that the plaintiff appears to have relied on his own lay expertise in drafting on his documents and presentation of evidence. I therefore strike out the entire suit with no orders as to costs, with leave granted to present a proper suit if need be.

Dated, signed and delivered at Kitale on this 20th day of March, 2018.

MWANGI NJOROGE

JUDGE

20/3/2018

Coram:

Before - Mwangi Njoroge - Judge

Court Assistant - Picoty

Plaintiff in person

N/A for the defendant

COURT

Judgment read in open court in the presence of the plaintiff.

MWANGI NJOROGE

JUDGE

20/3/2018