



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

ELC. CASE NO. 98 OF 2013

BACKSTONE OTIENO ANGANA.....PLAINTIFF

VERSUS

BENARD AMASAKA.....DEFENDANT

JUDGMENT

[1]. The plaintiff filed this case on 25th of May, 2015. In his plaint he states that he is the absolute owner of E. Bukusu/S. Kanduyi/5291. He states that he purchased the same jointly with one Silas Muyela Nganyi in the year 2011 from Zakayo Kweya Okoba who was the registered owner that he visited the land and found it vacant. That the agreement for sale was entered on 5/5/2011 and the purchase price was Kshs.700,000/= which the purchaser paid each Kshs.350,000/=. The plaintiff states that they went to the Kanduyi Land Control Board and a consent to sell the same was granted. He avers that in the year 2012 when he went to plough the land and he found the defendant in occupation of the same. That he had entered therein and constructed a one roomed mud and grass thatched house on the land. That the defendant violently restrained the plaintiff and his workers from entering he said land and completely denied them access therein. That the defendant claimed that the seller had not paid him and that he wanted to have an agreement with the seller for the payment of taking care of his land. That the plaintiff went there with the seller and that they were violently chased away by the defendant. That the plaintiff then instructed M/s Kituyi & Company to write a demand letter to the defendant.

[2]. The defendant filed a defence dated 10th October, 2014 he denied the allegations of the plaintiff and set out a counterclaim that he had acquired the land by adverse possession and asked the court to register the whole parcel in his name.

[3]. The plaintiffs filed a reply to the counterclaim and denied that the defendant had acquired the land by adverse possession and stated that the claim was misplaced.

[4]. During the hearing of the case Bacstone Otieno Angana explained how he purchased land parcel East Bukusu/South Kanduyi/5291 from Zakayo Okoba Kweyu the previous owner for Kshs.700,000/= and how after writing an agreement for sale he went to Kanduyi Land Control Board and a Consent for the said Sale was granted. How he visited the Land and ensured it was vacant. He further explained how he was chased away by the respondent from the said land when he went to plough the same in 2012.

[5]. Pw2 Zakayo Okoba Kweya a retired army officer adopted his statement of 25/5/2015. He explained how he sold his land E. Bukusu/S. Kanduyi/5291 to the plaintiff. He explained how he took the defendant to the land as his employee earning Kshs.1,500/= per month to help him on the land. He told the court that the defendant had no claim over the land and that he had no objection to him being evicted from the land. He explained to court that when he retired, he told the defendant that he was not in a position to pay him any more salary and he asked him to leave.

[6]. The defendant told the court that he comes from Siloba in Bungoma. He said that he lives on E. Bukusu/S. Kanduyi/5291. That he entered the land in 1992. That he entered therein as a caretaker/employee of the land. That he was taken there by his wife Veronica Akumu. He said that the land belonged to Zakayo Okoba Kweya. That he was not being paid and that he was supposed to pay himself by burning charcoal to sell to pay himself.

He admitted that he was told to leave the land by the plaintiff once he bought the land but the defendant refused to move out. On cross examination by Mr. Were learned Counsel for the plaintiff, he admitted that he has not planted cane, Bananas on the land. But he said he had a house on the land.

[7]. The issue for determination is whether the plaintiff ought to be granted his prayer of eviction and whether the defendant has acquired this land by adverse possession.

[8]. The plaintiff and another purchased this land from Zakayo Okoba Kweya for Kshs.700,000/=. They paid the full purchase price and

after the Kanduyi Land Control Board gave its consent, the land was registered into their names.

[9]. The defendant herein agrees that he entered the suit land through permission of the then registered owner Zakayo Okoba Kweya. He entered therein as a caretaker/employee of Mr. Kweya. He so remained. This land was sold by the registered owner to the plaintiff and another in 2011. This is the time the defendant was given notice to leave the land by Mr. Zakayo Okoba Kweya. A case was done before the Chief and village elders and it was decided that the defendant should be given one acre, one head of cattle to start his life. This is when the defendant's permissive occupation ended. Time for adverse possession against the registered owner of the suit land could only start then. This suit was filed on 16th April, 2013. This was hardly three (3) years. No adverse possession claim can therefore be sustained against the past or present registered owner of East Bukusu/South Kanduyi 5291.

[10]. The defendant has absolutely no right to be on the suit land. He shall move and vacate out of the said land forthwith. The plaintiff claim in the suit is allowed as prayed. The counterclaim is dismissed with costs.

Judgment read in open Court.

Dated at Bungoma this 7th day of March, 2018.

S. MUKUNYA

JUDGE.

In the presence of:

Joy: Court Assistant

Plaintiff: No present

Defendant: Present.