



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 92 OF 2012**

**JULIUS MAKAL LINGAA.....PLAINTIFF**

**VERSUS**

**RODAH CHEPOKAMUK NGELISIA.....DEFENDANT**

**JUDGMENT**

1. In the plaint dated 7/6/2012 which was filed on the same day the plaintiff seeks the following orders against the defendant:-

**(a) A declaration that the defendant by herself, her servants and or agents are trespassers on the parcel of land namely West Pokot/Keringeti "A"/570.**

**(2) An order of eviction be issued against the defendant herself, her servants and agents from the said parcel of land West Pokot/ Keringet "A"/570 and deliver vacant possession thereof to the plaintiff.**

**(c) Costs of this action.**

**(d) Any other relief the court may deem fit to grant.**

**The Plaintiff's Case**

2. It is the plaintiff's case that he is the registered owner of all that parcel of land known as **West Pokot/Keringeti "A"/570** measuring approximately **0.5 Ha**, having purchased it from one **Ngolesia Ngoriakamar**, now deceased, on 5/4/1976. The plaintiff accuses the defendant of wrongfully entering and remaining on the said land parcel, thereby cultivating it or leasing it for gain, and trespassing upon it without any consent from the plaintiff. The defendant has refused to deliver up possession to the plaintiff hence this suit.

**The Defendant's Case**

3. The defendant filed a defence dated 4/7/2012 denying the plaintiff's claim and averring that the said Ngelesia Ngoriakamar who was her husband never executed a transfer in favour of the plaintiff and that the plaintiff obtained title in his name fraudulently. The defendant avers that she is legally in occupation of the suit land. She specifically denies she is a trespasser thereon.

4. Further, the defendant avers that she has been in continuous and exclusive possession and occupation of the suit land for a period of over 12 years and that she has therefore acquired title to the suit land by way of adverse possession. The defendant also raised a defence of limitation by virtue of the provisions of the Limitation of Actions Act. Notably at paragraph 4 of the defence, the defendant appears to acknowledge the agreement between the plaintiff and her husband, in respect of which she pleads, as an alternative defence, that the deceased did not have the mental capacity to execute since he was inebriated.

5. By an application for leave to amend the plaint the plaintiff obtained leave and filed an amended plaint on 2/8/2013. The highlight of the amendment was that the allegation that the defendant wrongfully entered, took possession and unlawfully remained on the suit land was deleted in place thereof was substituted a claim that in the year 2008, the plaintiff gave licence to and permitted the defendant to stay on the said piece of land but on 20/6/2010 the defendant and her sons expressed their desire to buy the land parcel and undertook to buy the same by January, 2011 which they failed to do. Upon this default the plaintiff demanded that they vacate the plot but they refused. Since then, it is pleaded in the defence, the defendant has taken possession and unlawfully remained on the suit land thereby cultivating and leasing it for gain, and thereby trespassing thereon.

6. The hearing of this suit took place on 16/8/2016 and 27/2/2018. On the first days the defendant appeared in person, her Advocate having

withdrawn from acting for her vide an application dated 9/5/2015 which was unopposed and which was granted on 29/9/2015. The plaintiff testified and called one witness in the suit. On 24<sup>th</sup> October, 2016, the same firm of Advocates that had withdrawn from acting for the defendant filed a Notice of Appointment of Advocates and it was served with the Hearing Notice for the hearing of this suit on 2/11/2017. There was proper service. However there was no appearance for the defendant on 27/2/2018 and she was absent that the land was registered in his name.

### **The Plaintiff's Evidence**

7. The plaintiff testified on 16/8/2016. He produced a copy of the agreement dated 5/4/1976 between him and the plaintiff. It shows that he bought one acre at Kshs.1750/= which consideration was paid in full and in cash. The owner of the land is indicated at Ngolesia Ngoriakamar and his wife as Chepkamuk Ngolesia. The purchaser is identified as Julius M. Lingaa and his wife as Sarah Wamboi. The agreement was executed by the parties. Some elders said to be members of the "Land Committee" executed it as witness.

8. The plaintiff's further evidence was that he took possession of the land after purchaser but after living there for six years, he got employed and left the land. While away he got reports that his house had been burnt by unknown persons and he came and reported to the police. He testified that nobody objected to his purchase of the suit land. He produced the title, which was issued in 1993 and a certificate of official search as his evidence in this suit that the land was registered in his name.

9. He averred that in 2010 the defendant invaded the suit land by use of force whereupon the plaintiff reported the incident to the local administration. Upon this, the defendant said she wanted to purchase the land and sought 6 months to do so but she never did so within the period. A copy of the records of the proceedings at the Chief's office was produced in evidence as P. Exhibit 4. It shows that the meeting took place on 24/6/2010. The record intimates that the defendant's family recognized the plaintiff as the proprietor of the land and that they would purchase the same. Some members of the defendant's family are said to have signed or thumbprinted the said proceedings as a sign of being in agreement with the contents. However I note that there is no sign or thumbprint against the defendant's name.

10. Two demand letters written by Katina & Co. advocates were produced in evidence. The plaintiff was cross examined by the defendant but his evidence remained unshaken. It emerged during cross examination that the deceased had a large parcel of land and that the plaintiff's portion was carved out of the large portion.

11. PW2, a village elder testified on behalf of the plaintiff on 27/2/2018. He stated that the plaintiff bought the suit land in 1976 from the defendant's husband, built a house and stayed in the house. After 20 years the plaintiff went way to work elsewhere and left an old man to take care of the land. His house was later burnt. The defendant prevented the plaintiff from ploughing the land. Thereafter at the instance of the plaintiff Elders sat, discussed the issue and it was at that meeting that the defendant asked for 6 months to enable her organize a harambee to enable her purchase the land from the plaintiff. According to the witness, the harambee was conducted in 2010. According to the witness the plaintiff obtained from the process of land adjudication and the defendant has no right to the land.

12. I have examined the P. Exhibit 4 and I find that PW2 was one of the Elders listed therein as having sat over the dispute on 24/6/2010. I have no cause to disbelieve his evidence. All in all, I believe that the plaintiff's case is genuine. He has established his case on a balance of probabilities.

13. I therefore enter judgment against the defendant in terms of prayers (a), (b) and (c) of the amended plaint dated 4/7/2013.

It is so ordered.

**Dated, signed and delivered at Kitale on this 25<sup>th</sup> day of April, 2018.**

**MWANGI NJOROGE**

**JUDGE**

**25/4/2018**

Coram:

Before: Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the parties

**COURT**

Judgment read in open court.

**MWANGI NJOROGE**

**JUDGE**

25/4/2018