



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 74 OF 2015

K K W.....PLAINTIFF

VERSUS

S C K.....DEFENDANT

JUDGMENT

1. The plaintiff filed this suit on the 3rd June 2015. In his plaint bearing even date, he seeks the following orders:

(a) **An order of eviction of the defendant from 0.2 acres on Parcel No Kesogon 198.**

(b) **Costs of the suit.**

(c) **Any other relief.**

THE PLEADINGS

The Plaintiff's Case

2. The plaintiff's case is that he bought the suit land from one J M in the year 2011 but in the year 2014 the defendant trespassed thereon and has refused to move out despite the plaintiff's request to the administration to intervene in the matter. The plaintiff therefore prays for eviction of the defendant.

The Defendant's Defence

3. The defendant filed a defence on the 14th July, 2015 denying the plaintiff's claim. She avers that she and her husband who is the defendant's son are the lawful owners of the plot having acquired it by way of purchase in the year 2012, whereupon the couple took immediate possession and that the claim of alleged purchase by the plaintiff is fraudulent and meant to disinherit the defendant. As such the defendant avers that she does not need permission from the plaintiff to be on the suit land. It is alleged also that the plaintiff is concealing material facts and that he is attempting to use the illness of the defendant's husband to evict them from land they are entitled to.

4. The plaintiff filed a reply to the defence on the 23rd July 2015 and denied that the plaintiff bought the property or that the seller had any proprietary interest in the property. It is pleaded that the agreement dated 1/11/2011 is a forgery.

THE EVIDENCE OF THE PARTIES.

The Plaintiff's Evidence

5. The plaintiff's evidence is that he bought the land from one J M on 1/11/2011 for Kshs. 120,000/= and an agreement was written at the chief's office, Sinyerere in respect of the transaction. He produced the agreement as **P. Exh 1**. He then built a semi-permanent 3 roomed house on the land and he allowed his son J M then lived on the land. J's wife had deserted him. The wife had allegedly left with five children. Then later on he got information that the defendant and J were staying together. They stayed together for a year. According to the plaintiff the defendant was a neighbour and a friend and not a wife to J.

6. After his son got sick the plaintiff took him to the plaintiff's home and then asked the defendant to leave the suit property and go to her parents. He called the parents and some elders and the defendant still refused to leave. He went to the chief who wrote a letter dated 18/5/2015 which he produced as **P.Exh 2**. He planted maize on the suit land and when it was ready the defendant destroyed the crop whereupon he reported to the agriculture office and the chief.

7. According to the plaintiff he is not aware of any purchase of the plot from a man by the name Emmanuel Waswa. He does not know if the defendant had a relationship or children with his son.

8. The plaintiff, on cross examination, denied that he went to see the defendant with some elders. He stated that by the time the defendant met his son he had a wife and the defendant had a son. He averred that if the defendant was a member of his house he would not bring her to court. The land, he stated, belonged to him and not to his son.

9. PW2 J P M M testified that he had need for school fees and when the plaintiff came around looking for land to buy he sold him the suit land. According to him the land is known as **Trans Nzoia/Kipsaina/Sinyerere Block 2 Kisogon/[Particulars Withheld]**. He identified with the agreement **P.Exh 1**. He produced a copy of the title to the land as **P.Exh 4**. He denied knowledge of J, the plaintiff's son or any person who lived with the plaintiff and stated that he only dealt with the plaintiff. He also did not know Emmanuel Waswa. However he was able to identify the plaintiff's son from a photograph he was shown by the defendant.

The Defendant's Evidence

10. The defendant adopted her statement dated 10th July 2015 and filed on the 14th July 2014 as her evidence in chief. She identified the suit land as **Plot No [Particulars Withheld]**, which she and her husband purchased from one Emmanuel Waswa when her husband's mental health was stable. An elder sent by the Chief stamped the agreement in the presence of witnesses, who comprised of Waswa's mother and three neighbours. She produced the agreement between her and Waswa as evidence. It showed that the buyer was J M. She testified that the value of the land was Ksh 90,000/= and the house thereon Ksh 30,000/= which amounts were paid in cash. It was witnessed by four persons. None of them came to testify in the defendant's favour. The defendant also produced birth certificates for her three children in evidence that they were sired by J. Upon cross examination she stated that at the time of the purchase Emmanuel Waswa did not have a title deed. She also admitted that she had no documents in evidence that she was married to J. She averred that Waswa has never been given the title deed. She insisted that the plaintiff visited the defendant's home and there were ceremonies. The defendant called no witness in support of her defence.

DETERMINATION

Issues for Determination

11. I have considered the pleadings and the evidence given in this case at length. This court must determine the following issues which now arise:

(a) Which of the parties purchased the land?

(b) Does the defendant's relationship with the plaintiff's son entitle her to the land?

(c) What orders should issue?

(a) Which of the parties purchased the land?

12. The two agreements before court give very different accounts. The one produced by the plaintiff is dated 1/11/2011. The one produced by the defendant is dated 1/11/2012. The plaintiff's exhibit is signed and stamped by one Sammy Kurgat, and bears the stamp of the Chief of Sinyerere. The defendant signed and stamped by J. Kemboi, a village elder. The vendor in the plaintiff's agreement is J M M while the vendor in the defendant's agreement is Emmanuel Waswa.

13. However the defendant failed to bring to court independent evidence to demonstrate that Emmanuel Waswa was entitled to the land and that he could sell it to her husband. Her husband, apparently due to illness, did not testify in this matter. All the defendant's alleged witnesses never turned up at the hearing for unknown reasons.

14. On the other hand the plaintiff's witness who is alleged to be the seller appeared and testified in the matter and produced a copy of a title deed in evidence that the land had been registered in his name and title issued in the year 1997.

15. I therefore find the plaintiff's evidence in respect of the purchase to be stronger than the defendant's evidence on this issue and therefore find that the agreement produced by the plaintiff as **P.Exh 1** is the true agreement vide which the land was sold to the plaintiff.

(b) Does the defendant's relationship with the plaintiff's son entitle her to the land?

16. The defendant brought three birth certificates showing that two of her children had the details of their birth certificates reflecting that the plaintiff's son sired them. She also insisted that she and the plaintiff's son were husband and wife but she never produced any documents in proof of that allegation. The plaintiff's reply to this is that by the time the defendant related with his son, his son already had a wife who had deserted him with his five children. The defendant was silent on this issue. The plaintiff too was silent on the identity of his son's runaway wife and children and produced no evidence thereof. Should the court then take it that the defendant was the wife to J? On this issue I would hesitate to take the birth certificates as the conclusive truth of the fact that two of the children were sired by J. However the failure on the part of the defendant to call even her own kith and kin who were present at the nuptials that she alleges took place has contributed to doubt as to her marital status in relation to J. Nevertheless, had she proved that she was wife to J there is still the issue of the ownership of the land which this court can not gloss over: she has not provided proof that the land was bought by J. The relationship between the defendant and J is unclear and it is unsafe to premise any findings regarding her entitlement to the land on that relationship.

CONCLUSION.

17. The plaintiff has demonstrated that he has an agreement over the land. However, he is not the registered proprietor of the suit land and no reason has been given as to why the transfer in his name has not been effected. However the registered owner has admitted that he sold the land to the plaintiff.

18. There appears to be a family angle to this dispute which renders this a matter that should have been, with greater wisdom prevailing upon the parties, resolved between them as such. There are even young children involved in this dispute who can not speak for themselves in the matter. They will constantly need shelter and comfort. The dislocation of the defendant from the suit land may disrupt their life for a while before they settle down. I tend to have the idea that there are issues that have been concealed from this court by both parties on this family issue but it is up to them to live with the fact of concealment after this judgment. This court can only rule on the basis of the evidence on the record; this court can only rely on the agreements produced in evidence to determine who has better entitlement to the land, and I find that the plaintiff does.

19. I therefore enter judgment in the plaintiff's favour against the defendant in terms of prayer (a) of the plaint dated 3rd June, 2015 in this suit. In the light of what I have stated in the immediately preceding paragraph in this judgment, I hereby order that the parties shall each bear their own costs of this suit.

Dated, signed and delivered at Kitale on this 29th day of May, 2018.

MWANGI NJOROGE

JUDGE

29/5/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Arunga for the Plaintiff

N/A for the defendant

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

29/5/2018