



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 97 OF 2011

JANE KARIMI NJAU.....PLAINTIFF

VERSUS

RICHARD NGORIADONGO.....DEFENDANT

JUDGMENT

INTRODUCTION

1. The plaintiff commenced these proceedings by a plaint dated **1st November, 2011** which was filed on **2nd November, 2011**. She sought the following orders:

a) An order declaring that the plaintiff is the legal owner of Plot No. 176 measuring approximately 2.2 hectares at Chepchoina Settlement Scheme Phase 1 and that the defendant and those claiming under him do move out of the said plot and failing which they be evicted forthwith.

b) An order of permanent injunction restraining the defendant and all those claiming under him from interfering with the plaintiff's quiet enjoyment of the suit land.

c) Costs.

d) Any other relief this honourable court may deem just and fit to grant.

2. The defendant filed his defence on the **18/2/2012**.

THE PLEADINGS

The Plaintiff's Case

3. The plaintiff's claim is that she is the wife of **Dedan Njagi** (deceased who was the sole legal owner of **Plot No. 176 at Chepchoina Phase 1 Settlement Scheme** in former Kwanza District Trans-Nzoia County which was allocated to him by the Director of Land Adjudication and Settlement on **15/12/2009** and he has paid requisite Settlement Fund Trustee Loan.

4. The plaintiff states that in the year **2010** while she was in the process of taking possession of the suit land the defendant without any colour of right, reasonable cause and legal authority forcefully entered into the plaintiff's land ploughed and planted thereon.

5. The plaintiff further states that sometime in early **2011** the year of filing of the suit, the defendant for no reasonable cause whatsoever trespassed again into the said land, ploughed, planted again and threatened to cut the plaintiff with a *panga*; he also prevented her from taking possession of the same.

6. It is the plaintiff's case that the defendant's actions are unjustified, illegal, without legal basis and that he is now a trespasser on the suit land and he should be ordered to move out and failing which he should be evicted.

The Defendant's Defence

7. The defendant denied the plaintiff's claim. He states that in **1996** he was allocated **thirty (30) acres** of land being **Plots Nos. 427, 435 and 429, Chepchoina Settlement Scheme** by the District Settlement Office; that he was duly issued with an allotment letters for the plots; that if the plaintiff has been issued with an allotment letter for **Plot No. 176**, she should seek the intervention of the Settlement Office to point out

the plot and further denies that **Plot No. 176** falls within the area he “owns and occupies”; that he has never received any notification from the Settlement Office to vacate his parcel of land nor does he have any knowledge of sub-division of his plot; that the allegations of trespass are not true and the prayer for eviction is without merit; that the prayer for permanent injunction is misplaced since the defendant has occupied the plot since **1996** and he continues to plough and plant on the land. He also avers that no notice of the intended suit has been given.

THE EVIDENCE OF THE PARTIES

The suit proceeded to hearing on **3/10/2018**.

The Plaintiff's Evidence

8. The plaintiff testified in this case on **3/10/2018**. She adopted her statement dated **1/11/2011** as her evidence-in-chief. She produced the original allotment letter in respect of the suit land, a grant in **Succession Cause Number 73/2011**, receipts from the settlement office, a demand notice dated **11/3/2011**, and a surveyor's report dated **12/7/2018**.

9. On 12th March, 2018 this court ordered that the surveyor do visit the site and that he do file a surveyor's report; that report that emanated from that exercise is what the plaintiff produced as PExh 5(a) (b) and (c) while giving her oral evidence. It is dated **12/7/2018**.

The Defendant's Evidence

10. The defendant never gave evidence in this matter.

THE PARTIES' SUBMISSIONS

11. No submissions were filed by any party in this matter.

DETERMINATION

Issues for Determination

12. The issues that arise in this suit are as follows:

a) Whether the plaintiff is the owner of plot number 176 measuring 2.2 ha at Chepchoina Settlement Scheme;

b) Whether the defendant has trespassed thereon;

c) What orders should issue?

(a) Whether the plaintiff is the owner of plot number 176 measuring 2.2 ha at Chepchoina Settlement Scheme;

13. The documents that the plaintiff has produced have satisfied this court that she is indeed the administrator of the estate of her deceased husband and that the suit land had been allocated to her deceased husband. She has the locus standi to bring this suit.

(b) Whether the defendant has trespassed thereon

14. The Surveyor's Report produced in this suit shows that the defendant is in occupation of the suit land while he has his own plots situate elsewhere in the same scheme. The plaintiff has testified and pleaded that the defendant's occupation is without her consent. She also gave evidence that the defendant has threatened her with violence. I am satisfied that the plaintiff has proved that the defendant is a trespasser on the suit land.

CONCLUSION

(c) What orders should issue?

15. I find that the plaintiff has established her case against the defendant on a balance of probabilities. I therefore enter judgment in favour of the plaintiff and issue the following orders:

a) An order declaring that the plaintiff is the legal owner of Plot No. 176 measuring approximately 2.2 hectares at Chepchoina Settlement Scheme Phase 1

b) An order of declaration, declaring that and that the defendant and those claiming under him are trespassers on Plot No. 176 measuring approximately 2.2 hectares at Chepchoina Settlement Scheme Phase 1;

c) An order that the defendant and those claiming under him do move out of the said plot and failing which they be evicted therefrom;

d) An order of permanent injunction restraining the defendant and all those claiming under him from interfering with the plaintiff's quiet enjoyment of the suit land.

e) The defendant shall bear the costs of this suit.

It is so ordered.

Dated, signed and delivered at Kitale on this 30th day of October, 2018.

MWANGI NJOROGE

JUDGE

30/10/2018

Coram:

Before Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the plaintiff

but plaintiff in person present

Defendant absent

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

30/10/2018