



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 262 OF 2017

ERICK KIPLANGAT CHERUYOIT.....PLAINTIFF

-VERSUS-

RICHARD MASOI AND 33 OTHERS.....DEFENDANTS

JUDGEMENT

By a Plaint dated 25th April, 2014 the Plaintiff sought for orders of eviction against the Defendants, an order of permanent of injunction restraining the Defendants by themselves, agents and or employees from ploughing, cultivating, entering, trespassing or interfering with Land Parcel Cis Mara/Olpusimoru/428 hereinafter referred to as the suit land and costs of the suit.

It is the Plaintiff's case that on or about 15th January, 2013 he entered into a Sale Agreement with one Elizabeth Chepkirui Ngeny the Vendor for the sale of the suit land measuring 22.49 hectares for a consideration of kshs. 9,350,000/- and subsequently to which the suit land was registered and transferred in his name.

That despite the acquisition of the land, in September 2013 the Defendants without his authority illegally entered and took possession and occupation of the suit land.

The Defendants were served with summons to enter appearance and they subsequently filed a defence and a counter claim denying the allegations contained in the plaint and they stated that on diverse dates between 2010 and 2013 they entered into individual Sale Agreement with the registered owner of the suit land the late Kipngeno Arap Ngeny through their appointed agent Richard Marusoi the 1st Defendant and subsequent to this they took possession and occupation but to their dismay the Plaintiff failed to transfer the suit land to their individual names and they thus pray in their counter claim that the court declares them as the rightful owners of the suit land and order for the cancellation of the Plaintiff's title.

When the suit went for trial, the Plaintiff testified as PW1 and in his evidence he stated that he purchased the suit land in 2013 from the late Kipngeno Arap Ngeny through his daughter who had a Power of Attorney. He produced a Sale Agreement that was executed by him as the purchaser and Elizabeth Chepkirui as the vendor and a registered Power of Attorney in favour of the aforesaid Elizabeth Chepkirui Ngeny.

The Plaintiff further stated that in August 2012 prior to the execution of the sale he conducted due diligence in August 2012 when he visited the suit land and found the same was vacant and he subsequently obtained the relevant consent from the Land Control Board and had the property registered in his name and thus produced a certificate of title. He further stated that he later found 4 people on the suit land but with time their numbers increased.

On cross-examination, the Plaintiff stated when the suit land was transferred to his name, the Defendants were in occupation of the land. He further stated that the transfer was signed by one John Koech who had a Power of Attorney denoted to him by Elizabeth Chepkirui Ngeny. The Plaintiff stated that he was known to the 1st Defendant who was the agent of the vendor for another parcel of land.

Elizabeth Chepkirui Ngeny testified as PW2. She stated that she knew the Plaintiff as he is the one who purchased a parcel of land that belonged to her father at Olposimoru and she stated that she signed the Sale Agreement since she had a Power of Attorney and she produced a copy of the said Power of Attorney.

PW2 further stated that she knew the 1st Defendant as a friend of her family who her late father had appointed as his agent to sale other parcels of land and not the suit land and his role was limited to showing the potential buyers the land and later take them to the family lawyer who would conclude the transaction.

PW2 further stated that she denoted a Power of Attorney General to Erick Koech who was the General Manager of Soim Limited to sign the sale agreement as she was indisposed and expectant and couldn't travel to Kericho quite often.

On cross-examination she stated that a Power of Attorney she had was a general Power of Attorney and she received instructions from her later father and that the entire parcel of land was available for transfer. She stated that she knows the 1st Defendant and his role in her father's agent was limited to show potential buyers land but was not authorized to receive any money.

The Plaintiff also called John Koech as his witness and he testified as PW3 who stated that he worked at Soin Limited and had met the Plaintiff in September, 2012 when he had shown interest to purchase a piece of land wherein they showed him the land and a Sale Agreement drawn which he executed having had a Power of Attorney.

Counsel for the parties had by consent agreed that the statement by Kiprono Siele Sigira dated 11th July, 2016 and that of Richard Marusoi be adopted as their testimony.

In his statement Mr. Siele who is an Advocate of the High Court stated that he had offered to give a statement so as to assist the court in arriving at a just and fair decision in the matter having been the advocate of the late Kipngeny Arap Ngeny and seized of the matter in dispute and had done conveyancing in the matter he stated that the Power of Attorney that was given to the 1st Defendant was in respect of land parcel No. Nakuru/Olengurian/Amalo 314,315 and 316 that was sold to Florence Chelangat Langat and not Cis Mara/Olposimoru/428. He confirmed that the 1st Defendant duly acted as an agent of the late Kipngeno Arap Ngeny.

At the close of the Plaintiff's case, the 1st Defendant testified as DW 1. He stated that he met the late Kipngeno Arap Ngeny in 2010 where he was appointed as his agent to sell his properties and was later appointed as a Manager. He stated that he had authority to sale the suit land and when he got offers from his co-defendants he took them to the offices of the Kiprono Siele Sigiri advocates. They deposited money in his account in trust to the vendor Ngeny but when the Sale Agreement was drawn Mr. Siele refused to sign and execute thus he was forced to draw an agreement before the chief and caused the proceeds of the sale amounting to kshs. 2.5million to be deposited in the account of Soin Limited at Cooperative Bank.

The 3rd Defendant also testified in the matter and he informed the court that he met the 1st Defendant in 2012 and he bought 3 acres of land belonging to the late Kipngeno Arap Ngeny for kshs. 170,000 per acre and he deposited the purchase price into an account provided by the office of Siele Sigira Advocate which was in the name of the 1st Defendant.

The Defendant called one Grace Chepkemoi to testify as DW4. She stated that she was called to a meeting by the 1st Defendant where he showed them documents in respect of the land.

I have heard the witness testimony in the matter and I have read the submissions made by counsel for the parties and the issues for determination before me are:-

1. Whether the power of Attorney by Elizabeth was valid and she had capacity to transfer.
2. Who is the lawful owner of the suit.
3. Whether the Defendants are trespassers.

From the evidence before me it is not in dispute that the 1st defendant had a Power of Attorney which he used to transfer the suit land to the Plaintiff a fact that is not disputed. Mr. Sigira advocate did confirm that the suit land was sold to the Plaintiff even though the 1st Defendant had authority to sale another land known as Nakuru Olengurian/Amalo/314,315 and 316.

From the evidence before me and the witness testimony that I have heard, I find that the Plaintiff has proved his case on a balance of probabilities as he is the registered owner of the suit land and the Defendants have no authority to live on the land.

From the above therefore, I enter judgement for the Plaintiff against the Defendant jointly and severally as follows:-

1. An order of permanent injunction do issue restraining the Defendants by themselves, agents or servants from ploughing, cultivating, entering, trespassing and constructing on the suit land.
2. The Defendant to move/vacate from the suit land within the next 90 days from the date of this judgement and in default eviction orders do issue against the Defendant which eviction shall be carried out in accordance with the express provisions of the section 152 of the land act 2016.
3. Costs of the suit to the Plaintiff.

DATED, SIGNED and DELIVERED in open court at NAROK on this 1st day of November, 2018.

Mohamed N. Kullow

Judge

1/11/18

In the presence of:-

Mr Langat holding brief or Okwengu for the Plaintiff

Mr Jaoko holding brief for Munene Chege for the Defendant

CA:Chuma