



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KITALE

LAND CASE NO. 67 OF 2013

PAUL KIPKEMEI LAGAT.....1ST PLAINTIFF

JACKSON AKUNGA MOMANYI.....2ND PLAINTIFF

VERSUS

HENRY KAIBEI CHESEBE.....DEFENDANT

J U D G E M E N T

INTRODUCTION

1. The defendant is currently the registered owner of **LR. No. Kaisagat/Chepkoilel Block 4/Kipkoriony/6** measuring **3.7 acres** (suitland). The suitland is part of a large portion which was known as **LR. No. 5795** measuring **800 acres** and was owned by **Daniel Yegon**. Daniel Yegon had taken a loan from the Agricultural Finance Corporation (AFC). He was under pressure to clear the AFC loan. He decided to subdivide the land into blocks of various sizes which he then sold to individuals.

2. The individuals who bought land from Daniel Yegon came together and formed a committee which was to ensure that the AFC loan was repaid. The AFC loan was finally cleared in 2004.

PLAINTIFF'S CASE

3. The first plaintiff testified that he bought the suitland on **15/2/1992** from **Kipkosgei Yagan**. The suitland which had by then not been registered was known as **Plot No. 6** and was part of the larger plot known as **LR. No. 5795** commonly known as **Kipkoriony Farm**. On **31/3/1997** he sold **one acre** out of the suitland to the defendant. Later on on **20/2/2009**, he sold **two acres** to the second plaintiff. He remained with **0.7** of an acre.

4. The committee of Kipkoriony Farm summoned all its members to a meeting where it was resolved that any of the subdivided portions of Kipkoriony Farm which was occupied by more than one member, those in occupation were to pick on one person who was to process title in his name and thereafter transfer to the other occupants according to the portions held by each of the occupants.

5. In the case of Plot No. 6, there were three occupants namely, the first plaintiff who was entitled to 0.7 of an acre, the second plaintiff who was entitled to 2 acres and the defendant who was entitled to 1 acre. It was agreed that for Block 6, the defendant was the one to process title documents.

6. It had been agreed that the person chosen to process title was to indicate the persons in occupation and mutation forms were to reflect the persons in occupation. Contrary to the agreement, the defendant went ahead to process title in his own name to the exclusion of the plaintiffs. When the plaintiffs discovered this they went and reported the matter to the committee and the assistant chief as well as the chief of the area. The chief summoned the defendant who refused to attend the meeting. The chief then advised the plaintiffs to move to court and file a case.

7. The second plaintiff on his part testified that he bought his two acres from the first plaintiff. He took possession of the same in 2009. In 2013, he was surprised to receive a demand letter from the defendant's advocate who asked him to move out of the suitland on allegations that he was occupying the defendant's land.

DEFENDANT'S CASE

8. The defendant testified that he had title to the suitland which is 3.7 acres. That he bought two acres from Daniel Kipyegon Biwott. He was initially settled on a wrong plot which was 9 acres. This plot was owned by Arap Yagan. Arap Yagan was not happy about this. He wanted to move out. He agreed with Arap Yagan that he buys 3.5 acres. He asked for Yagan's account number where he deposited the agreed purchase price. He was later given clearance from the committee of Kipkoriony Farm. He processed and obtained title. Later the second plaintiff came and started constructing a house on the land claiming that he had purchased the land from the first plaintiff. He stated that the first plaintiff has not constructed on his land and that it is only the second plaintiff who has occupied his land.

ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION

9. I have carefully gone through the pleadings herein, the evidence and submissions by the plaintiffs and the defendant. The issues which emerge for determination are:-

- i. **Whether the suitland solely belongs to the defendant.**
- ii. **Whether the second plaintiff is occupying the defendant's land and if so whether he should be evicted from the same.**
- iii. **What order should be made regarding costs?**

Whether the suitland solely belongs to the defendant

10. There is no contention that the suitland is presently registered in the name of the defendant. The issue for determination is whether he is the one who is the sole owner of the suitland. The first plaintiff testified that he bought the suitland from Kipkosgei Yagan on 15/2/1992. He produced an agreement which is contained in the list of documents by the second plaintiff. According to this agreement, he bought 3.7 acres comprised in Plot No. 6.

11. During the time of processing title, there were three people occupying Plot No. 6. Two acres had been purchased by the second plaintiff and one acre by the defendant. The defendant does not deny that he bought one acre from the first plaintiff. It is the first plaintiff's evidence that the defendant was picked on to process title and later transfer to the other two. The evidence of the first plaintiff is corroborated by that of **PW5 John Omari Orina** the secretary of Kipkoriony Farm. This witness testified that because there were many members of Kipkoriony Farm and some plots had more than two occupants it was agreed that one was to be picked to be issued with title after which he could transfer to the others. In the case of Plot No. 6 (suitland) there were three occupants i.e. the first plaintiff who had 0.7 of an acre, the second plaintiff who had two acres and the defendant who had one acre. This is according to the register held by the committee of Kipkoriony Farm.

12. PW5 testified that Block 42 had 20 members. He was chosen as the one to be given title after which he was to transfer to the rest in the block. Title came in his name and he caused mutations to be prepared

to transfer to the rest of the members in the block. He surrendered the title in his name for subdivision purposes.

13. The first plaintiff's evidence was further corroborated by that of **PW3 Ben S. Wata** the Chairman of Kipkoriony Farm. According to the evidence of this witness, the defendant owns Plot No. 189 which is two acres. He further testified that the defendant is entitled to one acre in Plot No. 6. The second plaintiff owns 2 acres and the first plaintiff who owns 0.7 of an acre. He referred to a resolution of Kipkoriony Farm made on 29/11/2011 where it was resolved that where a plot was occupied by more than one member, one person was to be chosen so that title could be processed in his name and later transfer the same to the rest. In the case of Plot No. 6, it was the defendant who was chosen.

14. Plot No. 6 which was finally registered as the suitland is 3.7 acres. An extract of the area list was produced as Plaintiff Exhibit 10. This extract clearly shows that Plot No. 6 was owned by three individuals namely the defendant one acre, the second plaintiff, two acres and the first plaintiff 0.7 of an acre. The title which the defendant has comprises of 3.7 acres. It is therefore clear that the suitland is not the sole property of the defendant as he claims.

15. The defendant tried to justify the suitland to be his by producing title [Defence Exhibit 1] and some two deposit slips made to the AFC on account of Daniel Yego. These two deposits were made on 4/9/1995. This was before he bought one acre from the first plaintiff on 31/3/1997. The deposits were not made in respect of the suitland. The defendant tried to explain in his evidence that he bought off 3.5 acres from Daniel Yego on whose plot he had been wrongfully settled. This explanation does not add up. If he bought 3.5 acres from Daniel Yego which is not the case, how come that he got title for 3.7 acres? The defendant was supposed to transfer the respective portions to the first and second plaintiff in accordance with the farm's resolution of 29/11/2011 produced as Plaintiff Exhibit 4.

16. The defendant's counsel objected to production of the farm register and the mutations by PW5. This did not lessen or weaken the evidence by the plaintiff which was amply corroborated by that of PW3 and PW5. Though the plaintiffs had alleged that the defendant was fraudulently registered as owner of the suitland, there was nothing of that sort. The resolution of 29/11/2011 mandated him to be registered as such. His only problem is refusing to transfer the land to the other members of Plot No. 6 as per the resolutions. I therefore find that the plaintiff is not the sole owner of the suitland.

Whether the second plaintiff is occupying the defendant's land if so whether he should be evicted

17. There is evidence that the second plaintiff bought 2 acres from the first plaintiff. A sale agreement between him and the first plaintiff was produced as Plaintiff Exhibit 1. The sale took place on 20/2/2009. The second plaintiff has been in possession since then. The defendant only started demanding that he moves out of the two acres in 2013. The defendant does not say why he is not seeking to evict the first plaintiff if he is convinced that the entire 3.7 acres belongs to him. The second plaintiff is occupying his two acres which he lawfully bought from the first plaintiff. It therefore follows that he cannot be evicted from what lawfully belongs to him.

DECISION

18. From the reasons given herein above, I find that the plaintiffs have proved that they are entitled to 0.7 of an acre and 2 acres respectively from the suitland. As the title is in the name of the defendant I make an order cancelling the same and fresh titles issued in the proportions held by the plaintiffs and the defendant. The defendant's counter-claim is misconceived. The same is hereby dismissed with costs to the plaintiffs. The defendant shall also pay costs of the main suit to the plaintiffs.

Dated, signed and delivered at Kitale on this **20th** day of **January, 2017**.

E. OBAGA

JUDGE

In the presence of the defendant.

Court Assistant – Isabellah.

E. OBAGA

JUDGE

20/1/17