



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO 148 OF 2014

ABDIRIZAK ABDULLAHI ALIN.....PLAINTIFF

VERSUS

SIMON CHOPER.....1ST DEFENDANT

ESTHER ALEPER.....2ND DEFENDANT

JUDGEMENT

INTRODUCTION

1. The Plaintiff brought this suit against the two Defendants seeking a declaration that he is the owner of **Plot No 11 at Lodwar Town in Turkana County** (suitland). He also sought an order of eviction against the two Defendants and their agents.
2. The first Defendant is a son in-law to the second Defendant. The suitland comprises of semi permanent structures which have 17 rooms. The two Defendants are occupying three rooms. This case had been fixed for hearing but on three occasions, the hearing was adjourned at the instance of the Defendants' counsel. A fourth attempt to adjourn the case by the Defendants' counsel was rejected. Hearing proceeded and the Defendants' case was deemed as closed with no evidence from them.

PLAINTIFF'S CASE

3. The Plaintiff testified that he bought the suitland from **John Kisaka Mukakula** on 28/1/2014. He paid **Kshs 2,400,000/-** as purchase price. **John Kisaka Mukakula** had purchased the suitland from one **Joseph L. Lominto** who was the allottee of the suitland. A transfer from **Joseph L. Lominto** to **John Kisaka Mukakula** was effected. An allotment was then given in the name of **John Kisaka Mukakula** after payment of transfer fees.
4. The Plaintiff applied for development plans to the County Government of Turkana. The approvals were obtained. He then issued all the tenants in the suit land with a Notice to vacate to enable him put up a new building. All the other tenants moved out except the first Defendant.
5. The Defendants went to the County Lands Officer where they complained that someone wanted to grab the land on which the structures stood. **John Kisaka Mukakula** was summoned to the County Lands Office. The Defendants were present. The matter was deliberated and it was found that the Defendants had no claim to the suitland. The County Lands Office gave them 14 days to vacate the premises but the first Defendant did not do so.

ANALYSIS OF EVIDENCE

6. There is no doubt that the Plaintiff bought the suit land from **John Kisaka Mukakula**. A Sale agreement was produced **Exhibit 1**. **John Kisaka Mukakula** came as a witness of the Plaintiff. He testified on how he bought the suitland from **Joseph Lominto** who had been allotted the same. **Joseph Lominto** took him to the County Council of Turkana where an application for transfer was made and the allotment was changed to his name. The allotment was produced as **Exhibit 2**. A transfer was produced as **Exhibit 3**. Receipts for payment of transfer were produced as **Exhibit 4**. **John Kisaka Mukakula** is the one who was paying plot rent as per receipt produced as **Exhibit 5**.

7. When a dispute arose after the Plaintiff wanted the first Defendant to vacate, the matter was taken before the Ministry of Lands Turkana County Government. The two Defendants were given an opportunity to produce any document to show their claim in the land. They did not produce any. **John Kisaka Mukakula** was able to produce documents to show that he bought the suitland from **Joseph Lominto**. The second Defendant's claim that the suitland belonged to her late brother was found to have no basis. The resolutions of the Ministry of Lands from Turkana County were produced as **Exhibit 10**.

8. The first Defendant states in his statement that he was brought to the suitland by the second Defendant because he is married to the daughter of the second Defendant. The second Defendant states in her statement that the suitland belonged to her late brother. There is no single document filed by the second Defendant to support her claims. According to the Plaintiffs evidence, the second Defendant has moved out but it is only the first Defendant who has refused to move out.

9. The Plaintiff has been given approval to construct on the suitland, such approval could not have been given if the plot did not belong to the Plaintiff. The Plaintiff produced an application for development as **Exhibit 6**. He paid for the approval as per receipt dated 2/9/2012 **Exhibit 7**. He produced a Notice to vacate **Exhibit 8**. It is clear that the Defendants have no claim to the suitland. The first Defendant in the meeting held at the Ministry of Lands in the County

Government of Turkana acknowledged the fact that it is **John Kisaka Mukakula** who built the structures but claimed that John had disappeared leaving the premises in a state of disrepair. That he is the one who repaired the toilets. This does not entitle him to any claim over the suitland.

DECISION

I find that the Plaintiff has proved his case to the required standards. I allow the same and grant the following reliefs:

- (a) A declaration that the Plaintiff is the rightful owner of **Plot No. 11** at **Lodwar Town** in **Turkana County** together with all the improvements thereon.
- (b) An order of eviction is hereby issued against the Defendants, their agents, servants, employees and or any other person claiming through them from **Plot No 11** at **Lodwar Town** within **Turkana County**.
- (c) The Defendants shall jointly and severally pay costs of the suit to the Plaintiff.

Dated, signed and delivered at Kitale on this 9th day of May 2016

E. OBAGA

JUDGE

In the presence of Mr. Olonyi for plaintiff

Court Assistant – Isabellah

E. OBAGA

JUDGE

9/5/16