

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

LAND CAUSE NO. 444 OF 2015

LEONIDA CHELIMO NGENY.....PLAINTIFF

VERSUS

GAUDENZER JEMOSBEI KETER.....DEFENDANT

RULING

Leonida Chelimo Ngeny, (*hereinafter referred to as the plaintiff*) brought the suit herein against **Gaudenz Jemosbei Keter, (*hereinafter referred to as the defendant*)** claiming that the defendant is her sister whom she had paid for her education and provided for her other needs as an aid to sharpen and brighten her future. That in the year 1974, she in conjunction with the family came to an agreement and sought a bursary for the defendant herein at the Social Services an institution which was by then in charge of the bursaries. That they successfully obtained the bursary and the defendant smoothly continued with her studies.

Later on, the scheme was changed and the institution suggested that one could be given a portion which was by then headed by the settlement scheme. That she was approached later by the District Land Settlement officers who offered her a chance to purchase a portion of land from the Scheme which the plaintiff herein accepted. That one of the rules of the Scheme was that the parcel of land was to be registered in the name of the beneficiary of the bursary so that in case of default in repayment of the installments the same could be obtained and/or deducted from the beneficiary in future.

The parcel of land could not be registered under her name neither could she effect the transfer to her name since she had not cleared the debt owed to the settlement scheme. That she solely paid the debt which was deducted directly from her pay slip till payment in full.

That after completion of the payment, she did sub-division of the said parcel Uasin Gishu/Kimumu/292 which resulted to various plots namely Uasin Gishu/Kimumu/5253 to 5270 and has been in possession of the said parcel of land for a long time and even sold part of it to other people until recently when the defendant herein threatened to evict her son who has been residing in the suit parcel since 2003. That it was a surprise to her since she is the only one who paid for the said parcel alone of which the defendant also acknowledges. That at all material times, the suit parcel of land herein Uasin Gishu/Kimumu/292 belongs to her and no one should claim over it. She has never sold nor granted the defendant or any other person the suit land to warrant non-exclusive possession.

Her claim against the defendant herein therefore, is for a declaration that the plaintiff is the absolute owner of all that parcel of land known as Uasin Gishu/Kimumu/292 currently UG/Kimumu/5253-5270. She further prays for a declaration that the defendant is a trespasser to the subject suit land and her action be declared illegal and an order of permanent injunction restraining the defendant, her agents, servants or assignees from the suit land.

The defendant filed a defence denying the plaintiff's claim and states that she is the absolute owner of the suit properties. Consequently, the defendant filed an application to strike out the suit for disclosing no cause of action and for being scandalous, frivolous and vexatious and abuse of the process of the court. The defendant prays that the caution placed on Uasin Gishu/Kimumu/5253-5270 be lifted. The application is based on grounds that neither party owns the suit parcels of land as they have been subdivided and sold to third parties. The mother title was duly registered in the name of the defendant. Due process of law was followed in acquiring the said mother title. The supporting affidavit of the

defendant reiterates the above.

The plaintiff filed a replying affidavit whose gist is that she is the owner of the parcels of land 5253-5270. The plaintiff states that the suit parcel of land was formerly under Settlement Scheme where the defendant was a beneficiary to a bursary under the scheme. The plaintiff made payments towards the purchase of the land on an understanding that she would be the registered owner upon completion, however at the time of issuance of the title, she had not cleared the debt owed to the Settlement Scheme and the rules of the scheme were that the parcel of land was to be registered in the name of the beneficiary of the bursary so that in case of default in the repayment of the instalment, the same could be obtained and/or deducted from the beneficiary in future. She became entitled to the land after completion of the payments.

I have considered the application and the rival affidavits and submissions and do find that the plaint does not disclose a cause of action as it is not properly pleaded. However, an amendment can cure the suit. The plaintiff's claim is based on the allegations that she made payments towards the purchase of the land but could not be registered as a proprietor because of the rules of the Settlement Scheme which required that the land be registered in the names of the beneficiary of the bursary to enable the Settlement Scheme recover the land from the beneficiary of the bursary in case of default. This court orders that the plaint to be amended within a period of 14 days, failure of which the suit be and is hereby struck out as it discloses no cause of action. Costs of the application in any event to the defendant.

DATED AND DELIVERED AT ELDORET THIS 2ND DAY OF JUNE, 2017.

A. OMBWAYO

JUDGE