



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 33 OF 2015

ANDREW LOREYO WISA.....PLAINTIFF

VERSUS

LIMAGWANG AKELA *alias* LIMAKWANG AKELA ARIRI.....DEFENDANT

JUDGMENT

1. In the amended plaint dated 9/1/2016 the plaintiff in this case seeks a declaration that he has beneficial interest in a land parcel measuring **100x100 feet** being a portion of **Land Reference No. West Pokot/Cheparerai/1031**, having purchased the same from the defendant, and a mandatory injunction compelling the defendant to put the plaintiff back into possession and use of the land as well as an order of eviction against the defendant and his agents. He also seeks costs and interest.
2. Summons and plaint were served upon the defendant according to the affidavit of service dated 18/4/2016, on 22/2/2016. However the defendant failed to file a memorandum of appearance and defence. The suit therefore proceeded to formal proof on 5/10/2017 when the plaintiff alone gave evidence.
3. The plaintiff adopted his statement dated 16/2/2016 and filed in court on the same day. According to that statement and the plaintiff's additional oral evidence and the documentary evidence produced, the plaintiff's case is that he, by way of a written agreement dated 23/12/1991 bought a plot measuring **50 feet by 100 feet** for **Kshs.4300/=** from the defendant whereupon he took possession of the land so bought. The land from which the portion the plaintiff bought is now known as **West Pokot/Chepareria/1031** and is registered in the defendant's name. Apparently it was unregistered as at the time of the purchase transaction. The plaintiff had stayed on the land for **20 years** when the defendant's son came to remove the boundary to the plot. After the boundary was removed, the plaintiff says, he could no longer stay on the land. However he reported the matter to the area chief and.....
4. The plaintiff had also bought another plot from a different seller who had also bought it from the defendant. This second plot also measured **50 feet by 100 feet**. An original agreement dated 16/12/2014 was produced as evidence. He bought the latter for **Kshs.150,000/=**. The sale was witnessed by several persons. The original agreement vide which the seller's husband had bought the latter plot from the defendant was also produced as P. Exhibit 7. It is dated 2/8/1991. 5 people appeared having signed as witnesses to the transaction.
5. The total size of the land that the plaintiff now claims from the defendant is 100 feet by 100 feet. This is the size of the plot he was in occupation of by the time the defendant's son is said to have pulled down the fence around it and chased the plaintiff away. At the local chief's office, an agreement dated 26/5/2014 was entered into. The terms of the agreement were that the defendant do give back to the plaintiff the land parcel that he had purchased.

6. There is evidence in the form of demand letters written by the plaintiff's counsel to the defendant that the plaintiff pursued vacant possession of the land he had bought. Two letters dated 10/10/2014 and 14/11/2014 in that regard were produced as P. Exhibit 3 and P. Exhibit 4 respectively. The plaintiff prayed that the defendant be compelled to give him back possession of the land he purchased or a refund of the purchase price.

7. As stated earlier this suit is not opposed despite service of summons. I also find that the portion of land that the plaintiff claims is a specific, ascertainable one which he had occupied before he was evicted by the defendant's son in the year 2010. This matter was even taken before the local administrators and there are records of meetings to resolve it. There is evidence that at one such meeting the defendant had agreed to either give back possession of the land or the refund of purchase price to the plaintiff, neither of which has occurred to date.

9. I therefore find it is true that the plaintiff had bought and taken possession of the two plots which in total measured 100 feet by 100 feet and that he was wrongfully evicted therefrom by the defendant's sons. I also find that he is entitled to retake possession of the said plots.

10. I therefore find that the plaintiff has proved his case on a balance of probabilities against the defendant and I enter judgment for the plaintiff against the defendant as prayed in prayer **(a), (b), (c)** and **(d)** of the plaint dated **9/12/2016**.

11. I also order that the defendant shall execute all necessary documents to effect the subdivision of **LR. West Pokot/Chepareria/1031** in order to carve out the portion of **100 feet by 100 feet** claimed by the plaintiff together with all accesses thereto and the subsequent transfer thereof to the plaintiff, in default of which the Deputy Registrar of this Court shall execute such documents.

12. Dated, signed and delivered at Kitale on this **13th** day of **November, 2017**.

MWANGI NJOROGE

JUDGE

13/11/2017

Coram

Before – Mwangi Njoroge Judge

Court Assistant – Isabellah/Picoty

Ms. Bett for the Plaintiff

N/A for the Defendants

COURT

Judgment read in open court in the presence of counsel for the Plaintiff.

MWANGI NJOROGE

JUDGE

13/11/2017