



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 79 OF 2017

FRANCIS KIMAIYO CHEPTOO..... PLAINTIFF

VERSUS

SUSAN JEPKIYENG SUTER.....DEFENDANT

JUDGMENT

1. The plaintiff in this suit filed a plaint dated 10/4/2017 on 24/4/2017 in which he claimed the following reliefs against the defendant:

(a) An order of eviction of the defendant his agents, servants and or employees from the 1 acre part of Plot No. 1041 Milimani Settlement Scheme failing which she be forcefully evicted at her own costs through the assistance of the OCS Cherangany police station.

(b) Costs.

2. An affidavit of service sworn by one Godfrey Masinde Sitati on 26/5/2017 was filed in court on 22/6/2017 showing that the defendant was served. However the defendant did not file any Memorandum of Appearance or Defence to the claim. The hearing proceeded *ex parte* on 8/11/2017 when the plaintiff gave his evidence and called one witness.

3. According to the plaint and the evidence presented by the plaintiff the plaintiff is the owner of **Plot No. 1041/Milimani Settlement Scheme** measuring approximately **5 acres** while the defendant is the owner of **Plot No. 1097** also measuring 5 acres. The plots border each other.

4. The plaintiff's claim is that the defendant trespassed onto his land sometime in 2011 and carved 1 acre thereof, took possession, and has remained thereon to date thus denying the plaintiff the user thereof. The plaintiff testified that he had bought his land from one Vincent Kiprop who had gotten the land through an offer from the Government. An agreement between the plaintiff and the said seller was produced as "**P. Exhibit 1**". The seller, Kiprop, had obtained the land through a letter of offer whose copy was produced by the plaintiff as "**P. Exhibit 2**." The transfer between the contracting parties was produced as "**P. Exhibit 3**." The application for Land Control Board Consent ("**P. Exhibit 7**") was also produced as was a receipt of Kshs. 6984/= being the amount the seller had paid to the Settlement Fund Trustees for outright purchase of the plot No. 1041-Milimani. A copy of a letter from the District Land Adjudication and Settlement Officer, Trans-Nzoia dated 23/11/2012, addressed to the Director of Land Adjudication and Settlement. It requests the Director to effect the transfer of Plot No. 1041 to the plaintiff herein.

5. "**P. Exhibit 10**" is a handwritten agreement between the plaintiff and the defendant, apparently executed before the Assistant Chief, Milimani Sub-location. By that agreement, both parties agreed to maintain the beacons put between them by the Government Surveyors, and that the maize the defendant's

children mistakenly planted on Plot No. 1041 would be taken and owned by the plaintiff. In return, the plaintiff would buy 5 kg of maize seed and 25kg of D.A.P (presumed to be fertilizer) for the defendant. Two village elders affixed their signatures onto the agreement as witnesses, as did the Assistant Chief. The Chief also wrote a letter dated 14/4/2011 whose copy was marked “**P. exhibit 11.**” By that letter he warned the defendant against encroaching onto the plaintiff’s land. By another letter dated 18/4/2011, the Chief asked the defendant to remove her wire fence from the disputed area. “**P. Exhibit 3**” is a copy of the Registry Index Map Sheet No. 4 which shows that the plaintiff’s plot border one another.

6. I find that the plaintiff has exerted considerable effort to have the dispute resolved before coming to this court for relief. **PW2** testified that the plaintiff, the defendant and herself had had their land measured whereupon it was found that her land was smaller. Consequently all the land belonging to the three neighbours was put together and then shared out among them equally whereby each of them got 5.4 acres. New beacons were affixed to signify this new development. Each person was to move. The **PW2** moved into the portion that had been the plaintiffs but which was, by virtue of the new survey, hers. However, the defendant declined to move from approximately one acre of land which was according to the new developments, an entitlement of the plaintiff.

Upon considering all the evidence on the record, I find that the plaintiff has proved his case on a balance of probabilities against the defendant. The defendant should vacate the portion of land that now belongs to the plaintiff and restrict herself to what is rightful hers. I therefore enter judgment in favour of the plaintiff against the defendant as prayed in **prayer (a)** and **(b)** of the plaint dated **10/4/2017**.

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

MWANGI NJOROGE

JUDGE

20/12/2017

Before - Mwangi Njoroge -Judge

Court Assistant - Isabellah

Mr. Analo holding brief for Chebii for plaintiff

N/A for the defendant

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

20/12/2017