



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ENVIRONMENT AND LAND CASE NO. 184 OF 2016

WINNIE CHEMATIA SETTIM.....1ST PLAINTIFF

CAROLINE JEPKEMEI SETTIM.....2ND PLAINTIFF

VERSUS

SHADRACK KIPLETING KOSGEI.....1ST DEFENDANT

ANNE CHERUGUT KOSGEI.....2ND DEFENDANT

JUDGMENT

By a plaint dated 6th July 2016, the plaintiffs herein sued the defendants jointly and severally for :

- a. Vacant possession of plot No. 19 part of parcel of land No. CHEPSIRIA FARM LR. NO. 4482 for breach of contract.
- b. Cancellation of the sale agreement dated 30th April 2015
- c. A permanent injunction and eviction orders against the defendants in terms of paragraph 8 above.
- d. Costs of this suit.
- e. Any other or further relief this Honourable court may deem fit to grant.

The defendants were served with summons to enter appearance but neither entered appearance nor filed any defense in respect of this case. The case therefore proceeded by way of formal proof with service of a hearing notice upon the defendants.

This matter proceeded on 18th October 2017 when the 1st plaintiff testified and gave evidence on behalf of the 2nd plaintiff who is her daughter. The plaintiff stated that she has authority to give evidence on behalf of the 2nd plaintiff. She stated that the defendants herein were interested in purchasing $\frac{1}{4}$ of an acre of the 2nd plaintiff's land known as plot No. 19 Chepsiria farm L.R No. 4482.

The 1st plaintiff gave evidence that they entered into a sale agreement dated 30th April 2015 which she produced as exhibit No. 1. That according to the agreement the purchase price was kshs. One million and fifty thousand (Kshs. 1,050,000/ only) of which the defendants paid Kshs. 700,000/ (Seven hundred thousand shillings only) upon execution of the agreement leaving a balance of Kshs. 350,000/ which was to be paid on 31/7/15.

The plaintiff stated that the balance has not been paid to date and the defendants are staying on the suit land. It was the plaintiff's evidence that she was selling the land so that she could purchase another parcel of land. It was further the plaintiff's testimony that she instructed her lawyers to write a demand letter to the defendants which is dated 7/10/15 and she produced it as exhibit No. 2. She prayed that judgement be entered against the defendants as prayed in the plaint.

Counsel for the plaintiffs filed written submissions and reiterated the evidence of the plaintiffs. He submitted that the plaintiff had proved her case and that judgement should be entered against the defendants as prayed as the evidence has not been controverted.

Determination

This is a claim by the plaintiffs for cancellation of a sale agreement and a permanent injunction against the defendants. The plaintiff gave evidence and produced exhibits in respect of the sale agreement that was not honored. She also stated that the defendants did not complete the payment of the purchase price for the suit land as agreed yet they have been staying on the land.

The defendants were given an opportunity to respond to the case but did not file any papers in court. The plaintiff's evidence was uncontroverted. I find that the plaintiff has proved their case on a balance of probabilities and therefore enter judgement against the defendants jointly and severally and make the following orders:

- a. That the sale agreement dated 30th April 2015 is hereby cancelled
- b. An order that the defendants do give vacant possession of plot No. 19 part of parcel of land No. CHEPSIRIA FARM LR. NO. 4482 for breach of contract within 45 days upon service of this judgement or decree, in default of so vacating, an order of eviction be issued against the defendants from the suit land.
- c. Cancellation of the sale agreement dated 30th April 2015
- d. A permanent injunction is hereby issued against the defendants restraining them, their agents/servants from trespassing or interfering in any way with the suit land.
- e. The defendants to pay the costs of this suit.

Dated and delivered at Eldoret on this 14th day of December, 2017.

M.A ODENY

JUDGE

Read in Open Court in the presence of:

Mr. Oyaro holding brief for Mr. Chepkwony for the Plaintiff

Mr. Koech – Court Assistant.

Defendant – Absent.