



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 26 OF 2013

PAUL WANYONYI MAKOKHA.....PLAINTIFF

VERSUS

CATHERINE NALIKA.....DEFENDANT

J U D G E M E N T

I N T R O D U C T I O N

1. The plaintiff is a step son of the defendant. He is son of the late Wafula Kimalilo (deceased) who was the husband of the defendant. The deceased was a shareholder at Trans-Nzoia Investment company Limited (company). By virtue of his shareholding in the company, the deceased was allocated plot No. 76 at Sinoko farm which is two acres. The deceased later transferred his share to the plaintiff. In February, 2013, the defendant and her children invaded the plaintiff's land and started constructing on it. The plaintiff moved to court for mandatory injunction removing the defendant from the suit land. The plaintiff/applicant's application was allowed and the defendant was removed from the suit land.

2. When this suit came up for hearing on 29.9.2015 neither the defendant nor her lawyer were in court. The hearing date having been taken by consent, hearing proceeded ex-parte.

PLAINTIFF'S CASE.

3. The plaintiff testified that the defendant is his step mother. His deceased father was a shareholder of the company where he had been allocated plot No.76. On 2.12.2002, the deceased transferred his share to him. He produced transfer (exhibit 2)/ He also produced a letter which the deceased wrote asking the company directors to transfer his shares to the plaintiff (exhibit 3).

4. After the transfer was effected, a certificate was issued in his name (exhibit 1). The plaintiff also produced area list (exhibit 4) for Sinoko farm which shows that his name is on the list. The defendant has also her own land in the farm being plot No.100.

5. In 2007 the defendant filed a case against the deceased at the Kaplamai Land Disputes Tribunal. The Tribunal ruled that the defendant be given 2 acres at Chesikaki in Bungoma and two acres at Sinoko farm. The verdict of the Tribunal was adopted as judgement of the court vide Kitale land case No.102 of 2007. He produced proceedings of the Tribunal and decree of the court as exhibit 5 and 6 respectively. This decision had nothing to do with the suit land.

6. The defendant went and obtained a notice to show cause in land case No.107 of 2007 and attempted to

use it to evict the plaintiff from the suit land. The defendant did not succeed as the plaintiff was neither a witness or a party to the proceedings before the Tribunal.

7. It is after the defendant invaded the suitland in 2013 that he filed this suit against her.

ANALYSIS OF EVIDENCE

8. It is clear from the documents produced by the plaintiff that his father had transferred his share to him during his lifetime. This was in 2002. In 2007 the defendant filed a case against the deceased. The defendant was awarded 2 acres at Sinoko farm in Trans-Nzoia and 2 acres at Chesikaki in Bungoma. The defendant's plot at Sinoko is plot NO. 100. The proceedings before the Tribunal were not in respect of the suitland which had already been transferred to the plaintiff.

DECISION

There is therefore no basis upon which the defendant can lay claim to the suitland. The defendant moved out of the suit land after a mandatory injunction was given in favour of the plaintiff. It is now clear that the mandatory injunction was given properly at interlocutory stage. I find that the plaintiff has proved his case against the defendant on a balance of probabilities. A declaration is hereby issued that plot No. 76 at Sinoko farm solely belongs to the plaintiff. A mandatory injunction which had been issued against the defendant on 6.5.2013 is hereby confirmed in terms of prayer (b) of the plaint. The defendant shall bear costs of this suit.

Dated, signed and delivered at Kitale on this 28th day of January,2016.

E. OBAGA

JUDGE.

In the presence of M/S Munialo for plaintiff and M/S Chege for Mr.

Ngeywa for defendant.

Court Assistant - Isabellah.

E. OBAGA

JUDGE