



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 117 OF 2009

PETRO LOKAMAR NATEKEI:.....PLAINTIFF

VERSUS

AKADEL LONGOL

PENINA MUKURIA:.....DEFENDANTS

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 the registered owner of LR. No. Trans-Nzoia/Siyoi/248 (suit land). The first defendant had entered into a sale agreement with the plaintiff for purchase of $\frac{1}{4}$ an acre. The land was sold for Shs.13,200/=. The first defendant paid Kshs. 6,700/= and a balance of Kshs 6,500/= remained. The first defendant was unable to pay the balance. It would appear a dispute arose over the balance. The first defendant filed a claim before the now defunct Land Disputes Tribunal. The Tribunal ruled that the plaintiff gives $1\frac{1}{2}$ points to the first defendant from plot No.6 at Siyoi. The Tribunal verdict was adopted as a judgment of the court vide Kitale Land case No.10 of 2003 between the first defendant and the plaintiff.
2. The first defendant then proceeded to sell the $1\frac{1}{2}$ points to the second defendant who is in possession of the same to date. The plaintiff brought this suit against the defendants seeking the following reliefs:-

(a) A declaration that he is the sole legal and absolute owner of land parcel No. Trans-Nzoia/Siyoi/248.

(b) Permanent injunction restraining the defendants, their servants, agents and any person claiming through them from interfering with the plaintiff's user and occupation of parcel No. Trans-Nzoia/Siyoi/248.

(c) A mandatory injunction compelling the second defendant to vacate land parcel No. Trans-Nzoia/Siyoi/248 failing which she be evicted therefrom.

(d) Costs.

(e) interest.

PLAINTIFF'S CASE.

3. The plaintiff testified that the second plaintiff invaded the suit land claiming that she bought $1\frac{1}{2}$

points from the first defendant. The first defendant had bought 2 ½ points from him in 1993. He paid him Shs.6,700/= and there was a balance of 6,500/=. The first defendant did not clear the balance. In 2005, he went before the local chief who advised him to refund the Shs.6,700/= paid by the first defendant. The first defendant refused to take the refund. The first defendant later sold 1 ½ points to the second defendant.

4. The first defendant later filed a case against him before the Tribunal whose verdict was adopted as judgement of the court vide Kitale Chief magistrates court Land case No. 10 of 2003. The court ordered that he gives the first defendant 1 ½ points out of plot No.6. He contends that he has title to the suit land and that there was no objection from anyone when he obtained it.

FIRST DEFENDANT'S CASE

5. The first defendant who only knows to speak in Turkana testified that he bought 2 points from the plaintiff. The plaintiff later took one point from him leaving him with one point. On cross-examination by the plaintiff's lawyer he stated that he had bought 2 ½ points from the plaintiff.

SECOND DEFENDANT'S CASE

6. The second defendant testified that she bought 1 ½ points from the first defendant. This is after she was convinced that the first defendant had a decree from court ordering the plaintiff to give the first defendant 1 ½ points. She later brought in a surveyor who carved out 1.5 points from the suitland.
7. DW3 Joseph Wekesa came in as a witness of both the first and second defendants. He stated that he is a village elder and a neighbour of the second defendant. The plaintiff is the one who sold land to him as well as the first defendant. The first defendant did not complete paying for the land bought. A dispute was taken before the elders who resolved that the plaintiff be given land equivalent to the amount he had paid. The first defendant thereafter moved to the Tribunal which awarded him 1 ½ points. He went and extracted an order of the court which he took to the surveyors who came and carved out 1 ½ points which the first defendant had sold to the second defendant.

ANALYSIS OF EVIDENCE

8. There is no contention that the first defendant and the plaintiff entered into a sale agreement in which the plaintiff sold ¼ an acre to the first defendant. There is an agreement dated 25.2.1993 (exhibit 1). The first defendant paid Shs.6,700/=. He was to pay a balance of 6,500/= later. It is also not contested that the first defendant failed to clear the balance. A quarter an acre has 2 ½ points. Though the plaintiff and the first defendant did not come out clearly on what transpired thereafter, there is evidence on record that the first plaintiff sued the plaintiff before the Tribunal. The Tribunal ruled that the first plaintiff was entitled to 1 ½ points. This is what was reduced into a judgement of the court vide Kitale Chief Magistrate's Court land case No. 10 of 2003.
9. The first defendant then sold the 1 ½ points to the second defendant on 15.1.2010. The first defendant obtained a decree for 1 ½ points well before the plaintiff was issued with title on 24.10.2007. The plaintiff did not challenge the verdict of the elders. The decision therefore remains valid.
10. There is evidence that the plaintiff attempted to refund Kshs.6,700/= to the first defendant in 2005. The first defendant declined to take the money and I think rightly so because he had already secured a decree for 1 ½ points in 2003 land which was lesser than what he had intended to buy. This was for a good reason that he had not cleared the balance. The elders awarded him the equivalent of what he had paid.
11. The plaintiff seems to argue that plot No.6 which the decree refers to is not the same as the suit land. There is no basis for this. The decree came before the plaintiff's was issued with title. There is evidence from DW3 that he is staying on the suit land. This is the same land which was sold to the first defendant who in turn sold it to the second defendant. The plaintiff cannot therefore seek to evict the second defendant from land she lawfully bought from the first defendant. The first defendant got the land through a lawful process which has never been

reviewed or overturned.

DETERMINATION

For the reasons given herein, I find that the plaintiff's suit cannot succeed. The same is hereby dismissed with costs to the defendants.

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

E. OBAGA

JUDGE.

In the presence of M/S Munialo for Imbutsi for plaintiff and both defendants. Court Assistant - Isabellah.

E. OBAGA

JUDGE