



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 57 OF 2009**

**JOSEPH BARASA MAKHANU:.....PLAINTIFF**

**VERSUS**

**PETERNYONGESA:.....1ST DEFENDANT**

**ELIUD SIMIYU:.....2ND DEFENDANT**

**JUDGEMENT**

**INTRODUCTION**

1. The plaintiff is a brother to the first defendant and a step brother of the second defendant. Their father was called Makhanu Chemiati. The plaintiff brought this suit against the defendants seeking orders of eviction against them from a 1.6 acre parcel of land at Weonia farm. Weonia farm is owned by Weonia Farmers Co-operative Society Limited to which the plaintiff claims to be a member entitled to 100 shares.
2. Both the plaintiff and defendants were initially represented by lawyers but at the time of hearing, the lawyers had abandoned them. The first defendant did not participate in the hearing. The plaintiff filed notice of intention to act in person. The second defendant opted to urge his defence without the input of his counsel who was on record. As a result of this, the parties did not bring out their cases to the expected standards.

**PLAINTIFF'S CASE**

3. The plaintiff contends that he is a member of Weonia Farmers Co-operative Society where he owns 100 shares of 10 shillings each. He became a member of the Society in 1973. He was allocated 1.6 acres. He took possession of the 1.6 acres where he stayed until 2004 when the defendants invaded the land, demolished a toilet on it and the second defendant sold part of the land to a third party. The first defendant also attempted to sell part of the property but he stopped when the local chief informed him that there was a suit pending in court regarding the property.
4. The plaintiff produced a photocopy of share certificate from Weonia Farmers Co-operative Society Ltd (exhibit 1) and a copy of the society rules (exhibit 2). He contends that the defendants are the ones utilising the land and that he has nowhere to cultivate. He reported the defendants to police who summoned them but they did not heed the summons. He now wants an order of eviction to issue against the defendants and for payment of costs.

**SECOND DEFENDANT'S CASE**

5. The second defendant contends that the land in question belonged to their late father Makhanu Chemiati who was a member of Weonia Farmers Co-operative Society Limited. Their father was

- working for a white settler in a neighbouring farm. When their father noticed that some members had started interfering with his portion, he called in the plaintiff to take care of the land. The plaintiff came in and started taking care of the land. With time, the plaintiff tricked their father who gave him all the receipts which were in his name. The plaintiff then colluded with the officials of Weonia who listed him as the shareholder of their fathers land.
6. When the defendants realized what had taken place, they reported the matter to the local District Officer who summoned the local chief. The defendants complaints were listened to and it was found that the land belonged to the father of the defendants and the plaintiff. The land was then divided amongst the four sons of Makhanu Chemiati where the plaintiff is one of them.

#### **ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION:**

7. I have carefully gone through the evidence adduced by the plaintiff and the second defendant. The issues which emerge for determination are firstly whether the plaintiff bought 100 shares at Weonia Farmers Co-operative Society Ltd and if so if the same was equivalent to 1.6 acres. Secondly, whether the land in issue belongs to the father of the defendant's and the plaintiff. Thirdly, are the defendant's entitled to a share of the land at Weonia Farmers Co-operative Society Limited? Lastly, who is to bear the costs of this suit?
8. As I said hereinabove, this case was urged by the parties acting in person. Certain crucial documents which would have assisted the court were not produced. Be that as it may I will decide this case based on the evidence which emerged during the hearing. It is not in contention that the plaintiff is a brother to the first defendant and half brother to the second defendant. Their father was called Makhanu Chemiati. The plaintiff is the second son from the first house of Makhanu Chemiati. It is apparent that there were disputes as to where Makhanu Chemiati was to be buried when he died. Makhanu Chemiati was at first buried at a neighboring farm where he used to work for a white settler. His body was exhumed and re-buried on the disputed land.
9. During cross-examination, the plaintiff was shown a receipt dated 17.10.2005. This receipt was issued to Makhanu Chemiati their father. The plaiting claimed in answer to this receipt that he used to make payment through his father. This cannot be true. The plaintiff was an adult. If the disputed land was his, there was no point of him making payment and receipts being issued in the name of his father.
10. The plaintiff produced a photocopy of share certificate (exhibit 1 ) dated 24/10/2006 showing that he was a shareholder at Weonia Farmers Co-operative Society ltd. According to this certificate he had 100 shares and had been allocated 1.6 acres. He also produced rules of the Society(exhibit 2) where he has signed as member of Weonia Farmers Co-operative Society. According to the rules, each share is equivalent to 1,020/=. There is no evidence adduced to show that the 1.6 acres is equivalent to one share of 1,020/=. The share certificate the plaintiff produced was issued to him on 24.10.2006. As late as 2005, receipts were being issued in in the name of his father. I therefore find that it is not the plaintiff who bought shares at Weonia Farmers Co-operative Society Limited. It is the father who was a shareholder of Weonia Farmers Co-operative Society Ltd. and hence the owner of the disputed land.
11. There have been disputes regarding the disputed land. The body of the plaintiff and defendant's father was exhumed from elsewhere and reburied at the disputed land. This was conceded by the plaintiff during cross-examination. The dispute regarding the land was taken before the local District Officer who arbitrated on the same. The disputed land was sub-divided into four portions and given to each of the four sons of Makhanu Chemiati who was the shareholder of Weonia Farmers Co-operative Society Ltd. The plaintiff conceded during cross-examination that the land indeed was sub-divided into four portions.
12. The land having been given to Makhanu Chemiati by virtue of his being a member of Weonia Farmers Co-operative Society Ltd, and the said Makhanu Chemiati having died, all his children are entitled to a portion of the same. This has already been done by the same being sub-divided into four portions to represent the four sons.

**DISPOSITION**

13.I find that the plaintiff's suit is misconceived. He cannot seek to evict his brothers from land they are entitled to. I therefore dismiss the plaintiff's suit with costs to the defendants.

Dated, signed and delivered at Kitale on this 18th day of January, 2016.

**E. OBAGA**

**JUDGE.**

In the presence of plaintiff and both defendants. Court Assistant – Isabellah.

**E. OBAGA**

**JUDGE.**