



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 137 OF 2013

GEORGE JUMBA:.....PLAINTIFF

VERSUS

MARGARET WAFULA:.....DEFENDANT

JUDGEMENT

INTRODUCTION

1. The defendant is the registered owner of LR. No. Kitale municipality block 13/52 (suit land). The plaintiff filed this suit against the defendant seeking the following reliefs:-
 - (a) An order that the defendant's title to LR. No.Kitale Municipality Block 13/52 was acquired fraudulently.
 - (b) An order directing the District Land Registrar, Trans-Nzoia county to cancel the defendant's title and issue a new certificate of lease in the plaintiff's names.
 - (c) Costs of the suit.
2. The defendant who was duly served with summons to enter appearance and file defence neither entered appearance nor filed defence. The case therefore proceeded by way of formal proof.

PLAINTIFF'S CASE.

3. The plaintiff stated his case through his wife Zippy Kavere Jumba who had power of attorney from him. A power of Attorney duly registered was produced as exhibit 1. The donee of the power of Attorney testified that her husband had been allotted an unsurveyed residential plot No.45 at Kitale Municipality on 19.10.1992. A letter of allotment was produced as exhibit 2. The plaintiff had applied for allocation of the plot through Municipal Council of Kitale. Two receipts were produced as exhibit 4(a) and 4(b) dated 3.10.1991 and 28.11.1991 for Kshs.250 and 1100/= respectively.
4. The plaintiff later on paid Kshs.8265/= to the department of Lands on 15.2.1994 as per receipt produced as exhibit 5. Four assessment notices from the municipal council of Kitale for unimproved site value were produced as exhibit6. The assessment notices were issued on 13.4.1995, 12.5.1998, 14/5/1998 and 16/2/2004.
5. In 2005, the donee of the Power of Attorney went to the Lands office with a view to acquiring title for the allotted plot only to be told that the plot in issue had already been registered in the name of the defendant who had been issued with certificate of lease which she produced as exhibit 7. She further testified that she consulted the District Surveyor who confirmed to her that the plot which

had been allocated to her husband is the same plot which was later registered as Kitale Municipality block 13/52 (suit land). She visited the lands office where she confirmed that there were no documents by the defendant in the file. That it is only her husband's documents which were in the file but that the lands officials were arrogant towards her.

6. She contends that she put up two residential houses on the property in issue and that the defendant has never been to the site.

ANALYSIS OF EVIDENCE

7. The plaintiff had averred in his plaint that there was Kitale HCCC No. 27 of 2005 between the same parties which suit was dismissed for want of prosecution. A look at the certificate of lease in the name of the defendant shows that the same was registered on 16.12.2004 and certificate of lease issued on the same date. The plaintiff produced four assessment notices between 14.5.1998 and 16.2.2004. There was no evidence adduced to show that any amount was paid to the municipal council as assessed.
8. There is also no evidence to show that unsurveyed residential plot No. 45 Kitale Municipality which was allotted to the plaintiff is what became to be known as Kitale Municipality Block 13/52. There was no evidence from the lands offices to confirm the contentions of the plaintiff. The plaintiff adjourned this case on three occasions to enable him bring in a surveyor and land Registrar but he finally closed his case without calling any evidence from the survey and lands office departments. These two offices are the ones where documents relating to properties are kept. The officers from the two offices would have been of importance in this case.
9. The plaintiff's lawyer closed the plaintiff's case stating that there was no need to call any of those officers because certain issues had been clarified. These clarifications were not made known to the court.
10. During the hearing of this case, I doubted the demeanor of the donee of the power of attorney. I put certain questions to her for clarification. One of the questions was whether the defendant had ever come to the ground. Her answer was that the defendant had never come to the ground. The other question was on when she started putting up the rental premises. Her answer was that she started putting up the rental houses in 2005.
11. In view of the answers I got from the wife of the plaintiff, I decided to call for Kitale HCCC.NO.27 of 2005. It turned out that the defendant in this case was the plaintiff in Kitale HCCC. NO.27 of 2005 which was dismissed for want of prosecution. The plaintiff herein was the defendant in that case. The defendant herein had come to court seeking to restrain the defendant in Kitale HCCC.NO.27 of 2005 from constructing on her land. The parties then agreed to seek the services of a surveyor who was to point out the physical location of the plot in issue. This never happened until the suit was dismissed on 4.11.2008 for want of prosecution. It is therefore not correct for the plaintiff to claim that that the defendant had never gone to the ground. This even puts to doubt the service which is alleged to have been effected upon the defendant.

DETERMINATION

12. It was incumbent upon the plaintiff to prove that the registration of the suit land in the defendant's name was fraudulent. There is absolutely no evidence which has been adduced to show this. I therefore find that the plaintiff has failed to prove his case against the defendant on a balance of probabilities. The plaintiff's suit is hereby dismissed with no order as to costs.

Dated, signed and delivered at Kitale on this 24th day of February, 2016.

E. OBAGA

JUDGE.

In the presence of M/S Arunga for Plaintiff.

Court Assistant - Isabellah

E. OBAGA

JUDGE

24/2/16