



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 98 OF 2015 (O.S)

PATRICK KARIUKI WAITHAKA1ST PLAINTIFF

ROBERT KIMANI WANJIKU 2ND PLAINTIFF

VERSUS

DAVID CHERUIYOT RONODEFENDANT

J U D G E M E N T

INTRODUCTION

1. The defendant is the registered owner of LR No. Uasin Gishu/El-Lahre/142. The two plaintiffs brought an originating summons against the defendant seeking to be declared as having acquired two separate plots measuring 50 x 100 ft out of the Parcel owned by the defendant. The defendant who was duly served with the originating summons entered appearance but did not file any reply to the originating summons. An interlocutory judgement was entered against him in default of defence. He was served for formal proof but he never appeared during the hearing.

PLAINTIFFS' CASE

2. The first plaintiff **Patrick Kariuki Waithaka** testified that on 14/6/1998, he entered into a sale agreement with the defendant in which the defendant agreed to sell to him a plot measuring 50 x 100ft out of the Parcel held by the defendant. The agreed consideration was Kshs 150,000/-. He paid Kshs 75,000/= on signing of the agreement. The balance of kshs 75,000/= was made on 19/10/1999. He was put in possession on 14/6/1999. The plot fell on an agricultural area which required that consent of the Land Control Board be obtained. The defendant did not however take him before the board for consent.
3. The first plaintiff later gave the plot to a church which has built on it. The plaintiff as well as the church have been utilising the land peacefully until 2015 when the defendant went to the plot and issued threats that the church had no business being on the plot and that the church should quit.
4. The second plaintiff **Robert Kimani Wanjiku** testified that on 14/6/1999, he entered into an agreement with the defendant in which the defendant agreed to sell to him a plot measuring 50 x 100ft. He paid the defendant Kshs 150,000/= which was the full purchase price on 14/6/1999. He was put in possession immediately. He put up a house for rental. The defendant has since never gone to the land and has never taken him before the Land Control Board for consent.

ANALYSIS OF EVIDENCE, AND THE LAW

5. The Plaintiffs evidence was not controverted. Both plaintiffs produced sale agreements dated 14/6/1999. The first plaintiff's agreement is exhibit 2 whereas the second plaintiff's agreement is

- exhibit 4. A green card (extract of title) was produced as exhibit 1 by the first plaintiff. The extract from the register shows that the defendant is the registered owner of the land. A caution registered against the title by the first plaintiff is also reflected. It was registered on 19/3/2015.
6. The first plaintiff produced photographs of a church building on the plot which he bought from the defendant [Exhibits 3(a) (b) and (c)]. The second plaintiff produced three photographs showing the house he put up for rental on the plot he bought from the defendant [exhibit 5(a) (b) and (c)]. The two plots are fenced. There is uncontroverted evidence that both plaintiffs have been in peaceful occupation since they took possession on 14/6/1999. The defendant only went to the church plot given to it in 2015 and issued threats that the church had no business being on the land.
 7. The defendant has never gone to disturb the occupation by the second plaintiff. The law on adverse possession requires the plaintiff to show that he has been in possession of the suitland openly, peacefully with the knowledge of the defendant and that that occupation has not been interrupted for a period of 12 years. In the instant case, it is the defendant who put the two plaintiffs in possession on 14/6/1999.

The two plots were in an agricultural area. Consent of the Land Control Board was therefore required. There is evidence that the same was not given. The transactions therefore became null and void and the two plaintiffs occupation became adverse to that of the owner. For purposes of Limitation of Actions Act, time started running in favour of the two plaintiffs when they were put in possession on 14/6/1999. By 14/6/2011 the period of twelve years had elapsed and the defendant had lost title to the two plots to the two plaintiffs. His going to the church and issuing oral threats did not stop time from running in favour of the first plaintiff. The defendant has never taken any effective steps to interrupt the time from running. I therefore find that the two plaintiffs have acquired their respective plots by way of adverse possession.

DECISION

8. Having found that the two plaintiff have acquired their respective plots by way of adverse possession, I order that the defendant do sign all necessary documents to effect transfer of the two plots to the plaintiffs failing which the Deputy Registrar of this court do sign the transfer documents on his behalf. The two plaintiffs shall have costs of this suit.

Dated, signed and delivered at Kitale on this 31st day of March 2016.

E. OBAGA

JUDGE

In the presence of M/s Munialo for Mr Kiarie for Plaintiff

Court Assistant – Isabellah

E. OBAGA

JUDGE

31/3/16