



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 64 OF 2014**

**THOMAS ONSERIO OKERIO.....PLAINTIFF**

**VERSUS**

**ROBINA NGITI OKERIO.....1ST DEFENDANT**

**ALFRED MOMANYI.....2ND DEFENDANT**

**J U D G E M E N T**

**INTRODUCTION**

1. The Plaintiff is a biological son to the first Defendant who is allottee of **Plot No 41** (suitland) at **Geta Farm** a place in Trans-Nzoia Commonly referred to as **North Kisii**. The Plaintiff brought this suit against the two Defendants seeking a declaration that he is the lawful owner of the suitland through purchase. The plaintiff contends that the second Defendant invaded the suitland in the year 2012 and chased him away on allegations that he had bought the same.
2. During the hearing, the second Defendant was not in court. His advocate sent another lawyer to hold his brief and apply for adjournment. The lawyer who was holding brief for the second Defendant's lawyer applied for adjournment which application was rejected. The hearing therefore proceeded to conclusion without evidence from the second Defendant.

**PLAINTIFF'S CASE**

3. The plaintiff testified that he is the second born of the first Defendant who is his mother. The first Defendant is the lawful allottee of the suit land which measures 2 acres or thereabouts. On 19/5/2000, the Plaintiff purchased the suitland from the first Defendant who had the full consent of her other family members. He paid Kshs 75,000/= to the first Defendant.
4. The Plaintiff's other family members including the first Defendant were living in what is now **Nyamira County**. He immediately after purchase took possession of the suitland and constructed on it and started staying with his wife. In the year 2012, the second Defendant came into the suitland and demolished the structures on it. He (2nd Defendant) claimed that he had purchased the suitland from the first Defendant. The second Defendant caused the Plaintiff to be arrested and arraigned in Kitale Chief Magistrate's court in Criminal case No. 236 of 2014 which was however terminated for lack of evidence from the complainant.

**ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION**

5. The Plaintiff produced a sale agreement between him and the first Defendant [exhibit 1] . The agreement was made on 19/5/2000 and gives details on how the purchase price was to be shared between the first Defendant and her other sons. The wives of the other sons signed the agreement. There were also other witnesses from outside their family.
6. The Plaintiff also produced a letter from the District Land Adjudication and Settlement officer Trans -Nzoia [exhibit 2], which confirms that the first Defendant is the allottee of the suitland. There is no dispute that the first Defendant is the allottee of the suitland,. The first issue for determination in this case is whether the suitland was sold to the Plaintiff or second Defendant.
7. There is evidence that the suitland was sold to the Plaintiff in the year 2000. The first Defendant who sold the suitland to the Plaintiff has filed a statement of admission admitting that she sold the suitland to the Plaintiff who is her second born. In the same statement, she denies ever selling the suitland to the Second Defendant. Though the second Defendant did not adduce any evidence, I have looked at the defence which he filed. The defence does not state if he has any interest in the suitland or if he ever bought it in the first place. The defence is evasive and does not in any way counter the Plaintiff's claim. In the said defence, he alleges that he is not on the land which the Plaintiff claims. He also tries to bring in the issue of Limitation of Actions a point which is wholly misplaced. The second Defendant filed his defence on 15/5/2014. He did not refer to any sale agreement between him and the first Defendant. On 25/2/2015, he filed his list of documents containing two items. The first item is a copy of sale agreement allegedly made on 23/3/2012 between him and the first Defendant. The other items is a search certificate in respect of the suitland. He did not come to court to adduce evidence. The first Defendant having denied selling the suitland to him and the second Defendant having failed to come and adduce evidence to the contrary, I find that it is the Plaintiff who bought the suitland and not the second Defendant.
8. It is apparent that there arose a dispute amongst the family members as to whether the Plaintiff bought the suitland from the first Defendant. The family held a meeting in Nyamira County. The meeting resolved that the suitland had been sold to the Plaintiff. The minutes of this meeting were produced as exhibit 3. The chief from Nyamira County wrote a letter to the Chief Kiptoror location in Trans -Nzoia where the suitland is situate advising of the findings of the clan meeting and enclosing copies of the minutes. The letter was produced as exhibit 4. From that letter, it appears that the meeting found that the first Defendant was trying to sell the land for a second time. This finding is supported by the first Defendant's defence at paragraph 9 where she alludes to signing some documents given to her by the chief of the area where the suitland is located whom she had requested to assist her son to get title. She goes on to state in paragraph 10 of the defence that she does not remember selling the suitland to any other person and that if there is any such thing, then it is a fraud. Be that as it may, the fact remains that it is the Plaintiff who was the first to purchase the suitland.

## **DECISION**

9. From the evidence adduced herein, I find that the Plaintiff has proved his case on a balance of probabilities. He is the one who bought the suitland in the year 2000. I grant the following reliefs.
  - (a) A declaration that the Plaintiff is the lawful purchaser of the land comprised in **Plot NO. 41 at Geta Farm** and is therefore entitled to the same.
  - (b) A permanent injunction is hereby given restraining the Defendants, their agents or servants from erecting any structures on the same or in any way interfering with the suitland.
  - (c) Costs of this suit to be paid by the defendants jointly and severally.

**Dated, signed and delivered at Kitale on this 6th day of April 2016.**

**E. OBAGA**

**JUDGE**

In the presence of Mr Nyakundi for Mr Kaosa for the Plaintiff.

Court Assistant – Isabellah

**E. OBAGA**

**JUDGE**

**6/4/16**