



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 66 OF 2015

ENOCK NYONGESA MULAKORIPLAINTIFF

VERSUS

MRS KWAMBOKADEFENDANT

J U D G E M E N T

INTRODUCTION

1. The Plaintiff states that he is the beneficial owner of two acres comprised in **LR No. 8986** at **Big Tree Area** within Trans -Nzoia County. He filed this suit against the Defendant seeking an order of eviction from the two acres (suitland). The Defendant who was duly served neither entered appearance nor filed defence. This case therefore proceeded by way of formal proof.

PLAINTIFF'S CASE

2. The plaintiff testified that on 8/9/2000, he bought **two acres** comprised in **LR No. 8986** from one **Gladys N. Wabuge**. The sale agreement was executed on his behalf by his wife **Rose Nanjala Mulongo**. In the year 2013 while he was in South Sudan, he was informed that someone had invaded portion – the suitland and constructed a house thereon. When he came back from South Sudan, he asked the trespasser to move out but she declined arguing that she bought part of the suitland from his wife. He sought the intervention of the chief but the Defendant was adamant. This is why he came to court seeking orders of eviction.

ANALYSIS OF EVIDENCE

3. The Plaintiff produced a sale agreement dated 8/9/2000 [**exhibit 1**]. The agreement shows that the suitland was bought by the wife of the Plaintiff on behalf of the Plaintiff.

The Plaintiff also produced a letter dated 2/2/2015 [**exhibit 2**] from the chief of Mabonde location. This letter shows that the chief tried to resolve the dispute between the Defendant and the Plaintiff in vain. The Plaintiff too produced a demand letter and a reminder written by his lawyers. The same were produced as **exhibit 3(a) and (b)** respectively.

4. Whereas the Plaintiff claims in his pleadings that the Defendant invaded the suitland and carved out a portion for herself, the documents he has produced and the statement he recorded and filed show a different thing. According to the chief's letter produced as **exhibit 2**, it is the Plaintiff's wife who sold 0.1 of an acre (one point) to the Defendant at Kshs 45,000/-. It is also clear from that letter that the Plaintiff is not in good terms with his wife and that he has disowned the agreement between his wife and the Defendant.

5. In the statement which the Plaintiff filed on 19/5/2015 the Plaintiff has stated that sometime in 2011 he was in South Sudan. His wife became sick. She approached the Defendant who advanced her a friendly loan of **Kshs 45,000/-** which money was to be refunded upon his return from South Sudan. The Plaintiff delayed coming from South Sudan. The Defendant grew impatient, she went before the village elder where an agreement was executed purporting that the Defendant had purchased land equivalent to **Kshs 45,000/-** . When The Plaintiff came back from South Sudan, he tried to refund the **Kshs 45,000/-** to the Defendant but the Defendant declined to have it back. He left the money at the chief's office for collection by the Defendant but the Defendant never collected it. The chief later returned the money.
6. It is clear from the Plaintiff's evidence that he is not being truthful about how the Defendant came to occupy the suitland. What is however clear is that the Defendant bought part of the suitland from the Defendant's wife. She is not on that land as a trespasser but a purchaser for value.
7. If the Plaintiff is contending that his wife had no authority to sell the land, he should have sued the wife as well. It is not clear why the sale agreement had to be executed on behalf of the Plaintiff. The Plaintiff has not said that he was away in 2000 as to give his wife authority to purchase land on his behalf. There is alot the Plaintiff is not telling the court. There are contradictions in his evidence when considered with the documents he produced and the statement he recorded. The Defendant can only be evicted from the land if it is shown that she has no right of being there. This is not the case herein. The Plaintiff may as well have authorised his wife to sell part of the suit land just as he authorised her to purchase it. This may be a case of parties trying to renege on the agreement made.

DECISION

8. I find that the Plaintiff has failed to prove his case. The same is hereby dismissed with no order as to costs.

Dated, signed and delivered at Kitale on this 25th day of May 2016.

E. OBAGA

JUDGE

In the presence of Mr Teti for M/s Arunga for Plaintiff.

Court Assistant – Isabellah

E. OBAGA

JUDGE

25/5/16