



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 114 OF 2015

LIMAKOU CHELIBANG CHEPKOSET.....PLAINTIFF

VERSUS

CHEMKAN LIMANGURA.....DEFENDANT

J U D G M E N T

I N T R O D U C T I O N

1. The plaintiff is the registered owner of **LR. No. West Pokot/Chepkono/101** which is **6.36 Hectares** (suitland). The defendant is the wife of **Limangura Cheposo** (deceased) who sold the suitland to the plaintiff. The plaintiff brought this suit against the defendant seeking a declaration that he is the sole owner of the suitland and for an order of eviction from the suitland.

2. The defendant only entered appearance. On the date of hearing, her lawyer was present when the case was called out and confirmed for hearing but when the same came up for hearing neither the advocate nor the defendant were in court. The date having been taken by consent, hearing proceeded in the absence of the defendant or her lawyer.

PLAINTIFF'S CASE

3. The plaintiff testified that on **6/1/1980** he entered into a sale agreement in which the deceased agreed to sell to him the suitland at a consideration of **Kshs.8,000/=**. He first paid the deceased **Kshs.5,000/=** and later cleared the balance of **Kshs.3,000/=**. The land had not been registered in the name of the deceased. During land adjudication, the deceased confirmed that he had sold his entire interest to the plaintiff. The plaintiff was therefore registered as owner of the suit land.

4. The deceased re-located from the suitland and went and settled elsewhere with his family. When the deceased died, the defendant sold the land which the deceased had bought for his family and came back and started claiming back the suitland. She filed a claim before Lelan Land Disputes Tribunal. The Lelan Tribunal heard her claim and ruled that the plaintiff gives her back 10 acres.

5. The plaintiff was dissatisfied with the decision of Lelan Land Disputes Tribunal. He appealed to the Provincial Appeals Committee at Nakuru. The Provincial Appeals Committee set aside the decision of the Lelan Land Disputes Tribunal and ordered the defendant to vacate the suitland. The decision of the Provincial Appeals Committee was adopted as judgment of the court.

6. The plaintiff tried to obtain eviction orders through a notice to show cause but the trial magistrate

rejected the move holding that eviction orders could only be issued in a substantive suit.

ANALYSIS OF EVIDENCE

7. There is no contention that the deceased sold the entire suitland to the plaintiff. A sale agreement was produced as Plaintiff Exhibit 1. The sale occurred on 6/1/1980. The plaintiff processed and obtained title deed on 3/8/1999 as per the title deed produced as Exhibit 2. An official search was carried out on 5/8/2015 and it confirms that the suitland is in the name of the plaintiff. Certificate of official search was produced as Exhibit 3.

8. The defendant filed a claim before Lelan Land Disputes Tribunal in which she wanted to re-claim the suitland. The Tribunal ruled that the suitland had been sold without the knowledge of the family of the deceased. They ordered the plaintiff to give back 10 acres. Proceedings and the verdict of the Tribunal were produced as Exhibit 4.

9. The plaintiff appealed against the verdict of Lelan Land Disputes Tribunal. The memorandum of appeal was produced as Exhibit 6. The decision of the Provincial Appeals Committee was produced as Exhibit 7. The Appeals Committee found that the deceased had sold the suitland before it was registered in his (deceased's) name. The whole process was completed during the lifetime of the deceased and his family was aware but did nothing to stop the sale. The Appeals Committee therefore set aside the decision of Lelan Land Disputes Tribunal which had ordered that the plaintiff surrenders 10 acres out of the 16 acres which he had bought.

10. It is therefore clear that the defendant has no claim against the plaintiff. Her claim having been set aside by the Provincial Appeals Committee, she has no business remaining on the suitland. I find that the plaintiff has proved his case on a balance of probability.

DECISION

11. A declaration is hereby issued that the plaintiff is the sole owner of **LR. No. West Pokot/Chepkono/101**. An order of eviction is hereby issued against the defendant ordering her eviction, children, servants, employees or anyone claiming through them from **LR. No. West Pokot/Chepkono/101**. The OCS Kapenguria Police Station should assist in the eviction process. The defendant shall bear the costs of this suit.

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

E. OBAGA

JUDGE

In the presence of Mr. Barongo for Mr. Chebii for Plaintiff.

Court Assistant – Isabellah.

E. OBAGA

JUDGE

18/8/2016