



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 86 OF 2010

JANE KANDA KIPKORIR..... PLAINTIFF

VERSUS

DORCAS CHEBET.....1ST DEFENDANT

MR. KUNDU.....2ND DEFENDANT

DORCAS CHEBET.....3RD DEFENDANT

JONATHAN KIPKORE KIMWAI.....4TH DEFENDANT

KIPKORIR KIPKALAMU.....5TH DEFENDANT

DORCUS JEPKEMOI CHEBET.....6TH DEFENDANT

J U D G M E N T

INTRODUCTION

1. The plaintiff is holder of a power of attorney from **Margaret Kananu** who is the allottee of **Plot No. 1615 Milimani Settlement Scheme** within Trans-Nzoia County. The sixth defendant is the wife of **Luka Kipkemboi Chebet** (deceased) who was the allottee of **Plot No. 1527 Milimani Settlement Scheme**. The sixth defendant is now one of the administrators of the estate of the deceased and has since processed title in respect of the plot which had been allotted to the deceased.

2. The first defendant is a sister to the deceased while the second and fifty defendants are said to have been residing and working on the deceased's land and are the ones who trespassed on to the plaintiff's land prompting the filing of this suit. The plaintiff brought this suit against the defendants seeking a declaration that they are trespassers on land allotted to Margaret Kananu and for an injunction restraining them from interfering with Plot No. 1615 Milimani Settlement Scheme.

3. The defendants filed a joint statement of defence in which they raised a counter-claim in which the sixth defendant contends that the plaintiff has been interfering with Plot No. Trans-Nzoia/Milimani/1527 for which she claims damages. The plaintiff proceeded with her case to closure. The defendants' case was closed without any evidence from the defendants. The defendant's lawyer however filed written submissions.

PLAINTIFF'S CASE

4. The plaintiff testified that she holds a power of attorney from the allottee of Plot No. 1615 Milimani Settlement Scheme. She was mandated to take care of the said plot on behalf of Margaret Kananu the donee of the power of attorney. She was to take care of the boundaries of the land as well. The land adjoins Plot No. 1527 which is now owned by the sixth defendant. There was a boundary dispute between Margaret Kananu and the sixth defendant. The Land Registrar was called to the ground and he fixed the boundary on 30/6/2010.

5. The defendants later came and uprooted the beacons and chased away the plaintiff. They then planted on the same. She reported the incident to the area chief as well as the District Officer. The District Officer summoned the owner of Plot No. 1527 but she never heeded the summons.

ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION

6. The plaintiff was able to prove that she was given power of attorney by Margaret Kananu. A power of attorney duly registered was produced as Exhibit 12. An allotment letter was produced as Exhibit 4. The allotment letter shows that Plot No. 1615 which is 5 acres was allotted to Margaret Kananu. The plot in issue had an outstanding loan with Settlement Fund Trustee. The plaintiff produced three receipts for Kshs.27,000/=, Kshs.10,000/= and Kshs.5,000/= respectively. The receipts were produced as Exhibit 3 and they clearly show that the payment was made by the plaintiff on account of Margaret Kananu. The letter of offer to Margaret Kananu was produced as Exhibit 1.

7. The plaintiff produced a letter dated 15/3/2005 addressed to the second defendant [Exhibit 5]. This letter was written by the Chief Milimani Location and was warning the second defendant from interfering with workers of the plaintiff. There is another letter dated 13/2/2009 written by the District Officer addressed to the sixth defendant [Exhibit 6]. The District Officer was bringing it to the attention of the sixth defendant that reports had reached his office that she was preventing surveyors from carrying out their work.

8. On 5/1/2010, the Chief of Milimani wrote a letter addressed to the first, second and third defendants including other relatives of the sixth defendant. The letter [Exhibit 9] was warning them from interfering with the plaintiff's land. On 2/7/2010 the Chief of Milimani Location had also written a letter to the second defendant warning him against trespassing on to Plot 1615 or carrying out any activities on the same. This letter was produced as Exhibit 10.

9. Though the defendants did not adduce any evidence in their defence, a look at the pleadings show that the issues which emerge for determination are firstly whether Plot No. 1615 exists independent of Plot No. 1527. The other issue is whether the defendants have trespassed on to the plaintiff's land known as Plot No. 1615. The third issue is whether there has been any interference by the plaintiff of Plot No. 1527 and if so is the sixth defendant entitled to any damages? Lastly which order should be made on costs.

10. As regard to issue as to whether Plot No. 1615 exists independent of Plot No. 1527, there is uncontroverted evidence that Plot No. 1615 exists and that it is 5 acres. There is also evidence that Plot No. 1257 exists and is also 5 acres. The two plots are adjoining each other. A surveyor went to the ground and found that the sixth defendant has amalgamated the two plots into one. This evidence came from PW2 Joshua Kibet Chelanga who produced a report which had been prepared by his colleague David Ambani. This report which was produced as Exhibit 14 shows that the owner of Plot No. 1527 has combined it with Plot No. 1615. Both plots are 5 acres each but owner of Plot No. 1527 is claiming ownership of the combined plots. I therefore find that Plot No. 1615 exists independent of Plot No. 1527.

11. On the issue of trespass by the defendants on the Plot No. 1615, there is evidence from the plaintiff which evidence is not controverted that they chased away the plaintiff. The plaintiff complained and the chief as well as the district officer have been warning the defendants against interference. Letters were produced to this effect. When the surveyor went to the ground, he found that the owner of Plot No. 1527 had combined it with Plot No. 1615 and had cultivated the whole of Plot No. 1615. I therefore find that

the defendants indeed trespassed into Plot No. 1615 and the trespass continues to date as the trespassers have not been removed therefrom.

12. The sixth defendant alleged that the plaintiff has interfered with her plot and that she is claiming damages. There was no evidence adduced by the sixth defendant. Contrary to the allegations of the sixth defendant, it is the sixth defendant and her agents who have interfered with Plot No. 1615. I therefore find that the sixth defendant claims of trespass by the plaintiff has no basis and there is no basis upon which she can claim damages from the plaintiff.

DECISION

13. It is clear from the plaintiff's evidence that there is trespass to Plot No. 1615 by the defendants. I find that the plaintiff has proved her case on a balance of probability. Consequently I grant the following reliefs:-

(a) A declaration that the defendants are trespassers on Plot No. 1615 Milimani Settlement Scheme.

(b) A permanent injunction is hereby issued against the defendants restraining them as well as their servants or agents from in anyway occupying, cultivating or claiming Plot No. 1615.

(c) The trespassers should move out of Plot No. 1615 forthwith.

(d) The sixth defendant's counter-claim is hereby dismissed with costs to the plaintiff.

(e) The defendants shall pay costs of the suit to the plaintiff.

Dated, signed and delivered at Kitale on this **16th** day of **August, 2016**.

E. OBAGA

JUDGE

COURT

At 3.30 pm no appearance.

ORDER

Judgment signed in the absence of parties. Parties to read the same at the registry.

Court Assistant - Isabellah.

E. OBAGA

JUDGE