



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 151 OF 2014

J C K.....PLAINTIFF

VERSUS

J L.....DEFENDANT

J U D G E M E N T

INTRODUCTION

1. The plaintiff and the defendant are a married couple who are currently informally separated. The plaintiff who is the wife of the defendant brought this suit against her husband seeking a declaration that she is entitled to remain and utilize **LR Nos Kaisagat/Chepkoilel Block 6/Sambut**[particulars withheld] **and** [particulars withheld] which measure 5 and 2 acres respectively.

PLAINTIFF'S CASE

2. The plaintiff testified that she married the defendant in 2004 under Pokot customary Law. The marriage has been blessed with three issues namely T D, B K and C C. The plaintiff and the defendant initially settled at Luhya farm when they got married. They later moved to Sambut Farm where they bought the two proprietaries and set up their matrimonial home on **LR No Kaisagat/Chepkoilel Block 6/Sambut**[particulars withheld].

3. In the year 2010, the defendant chased away the plaintiff from the matrimonial home because he wanted to marry a second wife. The plaintiff took refuge in a neighbour's house before she rented a house at [particulars withheld] within Makutano in West Pokot County. The defendant indeed went ahead and married another wife whom he entertained briefly in their matrimonial house before he got a separate house for her.

4. The plaintiff stated that she is now living with the children of the marriage and that she is surviving on Kshs 7000/- which is deducted monthly from the salary of her husband who is a teacher. The defendant is the one who is enjoying the two properties with the second wife who he married.

DEFENDANT'S CASE

5. The defendant conceded that the plaintiff is his wife but that they separated on 10/2/2010. He stated that Kaisagat/Chepkoilel Block 6/Sambut/[particulars withheld] is 3 acres and that Kaisagat/Chepkoilel Block 6/Sambut/[particulars withheld] is 2 acres. The two parcels are registered in his name. That he is married to another wife. He utilizes LR No. Kaisagat/Chepkoilel Block 6/Sambut [particulars withheld] and his mother and other siblings utilize LR No. Kaisagat/Chepkoilel Block 6/Sambut [particulars withheld]. That his mother started staying on parcel No. 59 after he separated with the plaintiff.

6. The defendant denies that he is the one who chased away the plaintiff. The defendant stated that the plaintiff filed a children's case at Kapenguria Children's court. The court ordered that he provides Kshs 10,800/- per month towards the upkeep of the children but he later went and applied for review of the amount which was revised downwards to Kshs 7000/-.

ANALYSIS OF EVIDENCE , THE LAW AND ISSUES FOR DETERMINATION

7. I have carefully gone through the evidence adduced by the plaintiff as well as that adduced by the defendant. There is no contention that the defendant is the registered owner of the two parcels comprised in LR Nos Kaisagat/Chepkoilel Block 6/Sambut/[particulars withheld] and [particulars withheld]. Though there was no documentary evidence produced, the defendant has conceded that the two parcels are registered in his names. Though the plaintiff contends that the combined acreage of the two properties is 7 acres and the defendant contends that it is 5 acres, that is not material because the issue at hand is not on division of the two properties.

8. The plaintiff and the defendant are still married. The issue of division of the properties can only arise if they divorce which is not the case at the moment.

9. The plaintiff is not staying in the matrimonial home. She testified that she was chased by the defendant. Though the defendant denies that he chased the plaintiff from the matrimonial home, he admitted in his defence testimony that he differed with her. I do not Accept the defendant's evidence that he did not chase away the plaintiff.

10. The issues which emerge for determination are firstly whether the defendant chased away the plaintiff from the matrimonial home. Secondly whether the plaintiff is entitled to utilize the two properties. On the first issue, I have already found that the defendant indeed chased away the plaintiff. The cause of this was marriage to the second wife. During the hearing the defendant stated that besides the two women he has married, he has children from other women.

11. On the second issue, there is credible evidence that the plaintiff had settled with the defendant, on parcel No [particulars withheld]. They established their matrimonial home and had three children together. Section 12(3) of the Matrimonial property Act provides as follows:-

“ A spouse shall not, during the subsistence of the marriage, be evicted from the matrimonial home by or at the instance of the other spouse except by order of a court”.

12. In the instant case, the defendant has decided to chase away, the Plaintiff from the matrimonial home. The marriage between the two is still substing. There is no court order allowing the defendant to evict her. I therefore find that the act of the defendant chasing away the plaintiff is wrong and contrary to the law.

13. Section 17 of the matrimonial property Act allows a spouse to apply to court for a declaration of rights to any property which is contested between the two. In the present case, the plaintiff contends that she made contribution to the properties in issue and that she is entitled to utilize the same together with the matrimonial home.

14. I did not have the benefit of seeing which reliefs were granted in the children's case which was filed by the plaintiff against the defendant in Kapenguria Children's court. However be that as it may, it is clear that the action of the defendant in chasing away the plaintiff was wrong and contrary to the law. The plaintiff being still married to the defendant is entitled to enjoy the use of the matrimonial home and properties.

DECISION

15. Having found that the defendant's actions were wrong, I find that the plaintiff has proved her case to the required standards. A declaration is hereby issued that the Plaintiff is entitled to remain own and

utilize the two properties comprised in **LR Nos Kaisagat/Chepkoilel Block 6/Sambut**/[particulars withheld] **and** [particulars withheld]. Each party shall bear his or her own costs.

Dated, signed and delivered at Kitale on this 31st October 2016.

E. OBAGA

JUDGE

In the presence of Mr Chebii for Plaintiff.

Court Assistant – Isabellah.

E. OBAGA

JUDGE

31/10/16