



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 145 OF 2013

DAUDI KOPEN..... PLAINTIF

VERSUS

ANTONET KUPAR.....1ST DEFENDANT

MARIAM KATACHUM.....2ND DEFENDANT

GEOFFREY TUKOO.....3RD DEFENDANT

J U D G E M E N T

INTRODUCTION

1. The plaintiff is the registered owner of **LR. No. West Pokot/Siyoi/60** (suitland). The defendants are purchasers of portions of the suitland each measuring **50 x 100 ft** or an $\frac{1}{8}$ of an acre. The plaintiff brought a suit against the defendants seeking an order of eviction against them on the ground that the three defendants are trespassers.

2. The plaintiff was initially represented by the firm of Ambutsi & Co. Advocates but which law firm ceased to act for him on 22/4/2015. This case first came up for hearing on 13/7/2015. The plaintiff who had been duly served did not appear. His claim was dismissed with costs to the defendants for non attendance. The defendants were allowed to proceed with their counter-claim. Evidence of the first defendant was taken on that day. The rest of the defendants were heard on 28/6/2016.

FIRST DEFENDANT'S CASE

3. The first testified that she is a nurse at Kapenguria District Hospital. In **1983** she bought **0.25** of an acre out of the suitland. She took possession and constructed a house in which she lives todate. In 2013 the plaintiff applied for consent of the land control board which consent was duly given. Mutations were prepared and the plaintiff signed transfer forms. The first defendant has however not been able to obtain title for the plot she bought because the plaintiff has refused to surrender the original title to the suitland to pave way for processing of titles.

SECOND DEFENDANT'S CASE

4. Miriam Chepengat Limareng alias Miriam Ketachum bought a plot measuring **50 x 100 ft** from the plaintiff on **20/2/2012**. She paid **Kshs.150,000/=** on signing sale agreement and the balance was paid later. A surveyor was brought in who curved out the plot she bought. The plaintiff later applied for consent of the land control board which consent was duly given. Mutations were drawn and the plaintiff signed transfer in favour of the plaintiff. The transfer has not been lodged for registration as the plaintiff has refused to surrender the original title deed to enable the Lands Registry to process titles.

THIRD DEFENDANTS'S CASE

5. In **2008**, the third defendant who is a police officer was approached by **Peter Yopungura Kopen**, a son of the plaintiff who told him that his father had given him a plot measuring **50 x 100 ft** and that he wanted to dispose it of and go and purchase a plot elsewhere. The third defendant accompanied him to his father, the plaintiff herein who confirmed that he had indeed given his son a plot and that he had no objection if he disposed the same.

6. The plaintiff promised to sign transfer documents. An agreement was made between the plaintiff's son and the third defendant. He paid **Kshs.300,000/=** to the plaintiff's son. The plaintiff later applied for consent of the land control board which was duly granted. The plaintiff signed a transfer form after mutations were prepared. The plaintiff however declined to surrender the original title deed to enable successful lodging of the transfer documents.

ANALYSIS OF EVIDENCE

7. I have carefully gone through the documents produced by the three defendants. The second defendant produced a sale agreement signed between her and the plaintiff [Exhibit 10]. The purchase price was **Kshs.550,000/=**. **Kshs.150,000/=** was paid on execution of the agreement. The balance of the purchase price was paid and was acknowledged at the back of the original agreement.

8. The first defendant testified that she bought her plot in **1983** and paid **Kshs.4000/=** for it. Though she did not produce an agreement she had an explanation for not doing so. The agreement had been kept by her husband who lost it. However this notwithstanding, the plaintiff went ahead to sign all the necessary documents. He even signed transfer in favour of the first defendant.

9. The third defendant produced an agreement between himself and the son of the plaintiff [Exhibit 20]. The suitland was in the plaintiff's name but the third defendant entered into a sale agreement with the son after the plaintiff confirmed to him that he had given it to his son and he had no objection to the sale of the same. The plaintiff later signed transfer documents because the land was still in his name.

10. The plaintiff applied for consent of the land control board in respect of all the three defendants. Consents to transfers were duly given. Mutations were prepared and each of the three defendants portions on the ground were indicated in the sketch accompanying the mutations. The plaintiff went further to sign transfer forms. He provided his photographs and PIN certificate and copy of his ID Card. He gave these documents to each of the three defendants.

11. When the defendants were asked to ask the plaintiff to surrender the original title deed so that new titles could be processed, he started giving excuses that the original was with his son. In the dismissed claim brought by him, he claimed that if there was any sale the same was done by his son who had no authority to do so. I do not find any merit in the plaintiff's claim. He signed all the documents. He gave his photograph and PIN certificate and copy of his ID card. He is not alleging that his thumbprint was forged or his photograph and ID card and PIN certificate were fraudulently obtained.

12. All the three defendants paid the full purchase price. The consent of the land control board was obtained. Transfer forms were signed. The three defendants met their part of the bargain. It is the plaintiff who has not met part of the bargain. One of the defendants has been residing on the plot she bought since 1983. She produced photographs of her homestead.

13. The third defendant has been residing on the plot he bought since 2008. The second defendant bought her plot in 2012. She has put up a permanent house on her plot. I find that the defendants have proved their counter-claim on a balance of probabilities.

DECISION

14. The plaintiff is ordered to surrender the original title for **LR. No. West Pokot/Siyoi/60** to the lands office Trans-Nzoia/West Pokot to facilitate transfer failing which the Land Registrar Trans-Nzoia/West Pokot should go ahead to issue title deeds in favour of the three defendants being titles **Nos. West Pokot/Siyoi/5331, 5332 and 5333**. The plaintiff shall bear the costs of the main suit and the counter-claim.

Dated, signed and delivered at Kitale on this 13th day of October, 2016.

E. OBAGA

JUDGE

In the presence of M/s. Wanyama for defendants.

Court Assistant - Isabellah.

E. OBAGA

JUDGE

13/10/2016